International Labour Standards and Colombian Legislation

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IT WAS the Colombian statesman José Camacho Carreño who made the following declaration at the Seventh International Conference of American States, held at Montevideo in 1933: " For all that is best in our legislative systems, in the way of protecting workers' rights, we are entirely indebted to Geneva; anyone who cares to go over the history of legislation in our countries can make the proper comparisons and recognise that what is soundest, most humane, fairest and most equitable comes from Geneva." [2]

The speaker was referring to the social legislation of the Latin American countries in general, but his statement is particularly apposite today for his own country of Colombia. The present article will set out to demonstrate this by dealing in particular with the influence that international labour Conventions ratified by Colombia have had on the country's legislation.[3]

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[2] Seventh International Conference of American States, Montevideo, 1933: *Actas y antecedentes, Quinta Comisión*, p. 16.

[3] The *International Labour Review* has published several articles on the influence of international labour Conventions on national legislation. See N. VALTICOS: " The influence of international labour Conventions on Greek legislation ", Vol. LXXI, No. 6, June 1955, p. 593; V. K. R. MENON: " The influence of international labour Conventions on Indian labour legislation ", Vol. LXXIII, No. 6, June 1956, p. 551; A. BERENSTEIN: " The influence of international labour Conventions on Swiss legislation ", Vol. LXXVII, No. 6, June 1958, p. 495; " The influence of international labour Conventions on Nigerian legislation ", Vol. LXXXII, No. 1, July 1960, p. 26; Luisa RIVA-SANSEVERINO: " The influence of international labour Conventions on Italian labour legislation ", Vol. LXXXIII, No. 6, June 1961, p. 576; Karl Nandrup DAHL: " The influence of I.L.O. standards on Norwegian legislation ", Vol. XC, No. 3, Sep. 1964, p. 226; Amor ABDELJAOUAD: " The influence of international labour Conventions on Tunisian legislation ", Vol. 91, No. 3, Mar. 1965, p. 191; Jan ROSNER: " The influence of international labour Conventions on Polish legislation ", Vol. 92, No. 5, Nov. 1965, p. 353; Ratko PEŠIĆ: " International labour standards and Yugoslav legislation ", Vol. 96, No. 5, Nov. 1967, p. 443; G. A. JOHNSTON: " The influence of international labour standards on legislation and practice in the United Kingdom ", Vol. 97, No. 5, May 1968, p. 465; and L.-E. TROCLET and E. VOGEL-POLSKY: " The influence of international labour Conventions on Belgian labour legislation ", Vol. 98, No. 5, Nov. 1968, p. 389.

Some background information is needed first of all. Colombia is a founder member of the International Labour Organisation. As one of the countries invited to adhere to the Covenant of the League of Nations immediately after its signature, it did so formally on 16 February 1920 following the adoption by Congress of Act No. 49 of 4 November 1919 authorising the Government to adhere " on behalf of the Republic to the Covenant of the League of Nations as adopted by the Peace Conference ". Although membership of the League automatically conferred membership of the I.L.O., Colombia had in fact participated in the work of the Organisation since its earliest days, having sent a delegate to the First Session of the International Labour Conference, which was opened in Washington on 29 October 1919. Since then Colombia has twice been a member of the Governing Body of the International Labour Office: from 1954 to 1957 and during the present period, 1966 to 1969.

International labour Conventions and internal law

In order to assess the influence of international labour Conventions on Colombian legislation it must be noted that, in contrast to the system in certain other countries, the Constitution of Colombia does not provide for automatic incorporation of ratified Conventions in national legislation, with binding force for subjects of the country. In this it follows the dualist theory of international law, according to which treaties are merely a source of reciprocal obligations among the parties subject to international law, without any direct, intrinsic consequences for the internal law of those States. Their provisions cannot therefore be cited by citizens in their dealings with national authorities until such time as a specific enactment has given them force of law in the substantive sense, as binding requirements within the national legal system.

Hence in Colombia neither the instrument of ratification of an international labour Convention nor the Act of approval (constituting formal legislation) gives the standards laid down by the Convention validity under national law. For the Convention to be applied, substantive legislation must be passed, stating how the subject-matter is to be regulated in accordance with the relevant standards.

The first ratifications

In conformity with the Constitution of the I.L.O. the first 26 international labour Conventions adopted by the International Labour Conference at various sessions were submitted by the Government to Congress, which approved the majority of them. They were presented to Congress by the Minister of Foreign Affairs (and later President of the Republic), Dr. Eduardo Santos. The 1930 session of Congress ended before the Bill

in question became law so it was presented again in 1931 by the new Minister of Foreign Affairs, Dr. Roberto Urdaneta Arbeláez (who was also to serve as President of the Republic). The commentary on the Bill was accompanied by a report by the General Labour Office of the Ministry of Industry, " a sufficiently full and comprehensive document, studying the desirability of approving the . . . Conventions in question, or at least the majority of them, in the light of national legislation, social conditions and the industrial situation ". The message containing the commentary concluded as follows: " In case it might appear inconsistent for the statement relating to this Bill to list Conventions for which legislative approval is not being recommended, I believe I should inform you that the Director of the International Labour Office has on several occasions urged this Ministry to press the Government to comply with the obligation laid down in the Treaty of Versailles by submitting the respective drafts for study by the national authorities called upon to approve Conventions, even though the Government may not specifically recommend their approval. . . . In submitting the . . . Conventions to you I must reiterate the reservations contained in the earlier commentary but would respectfully urge you to approve those regarding which the General Labour Office has made no observations." [1]

The Bill was adopted and became Act No. 129 of 23 November 1931. Following this approval by Congress, the Government ratified 24 international labour Conventions [2] through the permanent delegation of Colombia to the League of Nations, which sent the appropriate communication to the I.L.O. from Paris on 17 June 1933.

Other ratified Conventions

Following approval of Act No. 54 of 1962 Colombia also ratified the Holidays with Pay Convention, 1936; the Protection of Wages Convention, 1949; the Equal Remuneration Convention, 1951; and the Abolition of Forced Labour Convention, 1957. Ratification of these four Conventions was communicated by the Minister of Labour (and later Minister of Foreign Affairs), Dr. Cástor Jaramillo Arrubla, on 7 June

[1] *Leyes autógrafas de 1931* (Archivo del Congreso, Colombia), Vol. XVII.

[2] The Conventions in question are as follows: Hours of Work (Industry), 1919; Unemployment, 1919; Maternity Protection, 1919; Night Work (Women), 1919; Minimum Age (Industry), 1919; Minimum Age (Sea), 1920; Unemployment Indemnity (Shipwreck), 1920; Placing of Seamen, 1920; Right of Association (Agriculture), 1921; Workmen's Compensation (Agriculture), 1921; White Lead (Painting), 1921; Weekly Rest (Industry), 1921; Minimum Age (Trimmers and Stokers), 1921; Medical Examination of Young Persons (Sea), 1921; Workmen's Compensation (Accidents), 1925; Workmen's Compensation (Occupational Diseases), 1925; Equality of Treatment (Accident Compensation), 1925; Night Work (Bakeries), 1925; Inspection of Emigrants, 1926; Seamen's Articles of Agreement, 1926; Repatriation of Seamen, 1926; Sickness Insurance (Industry), 1927; Sickness Insurance (Agriculture), 1927; and Minimum Wage-Fixing Machinery, 1928.

1963 during the 47th Session of the International Labour Conference in Geneva. More recently Colombia has ratified the Labour Inspection Convention, 1947, and the Employment Service Convention, 1948. Ratification of these two Conventions was based on their approval by Congress through Acts Nos. 23 and 37 of 1967, respectively, and communicated by the Minister of Labour, Dr. Carlos Augusto Noriega, on 9 November and 27 October 1967. As permitted under the Labour Inspection Convention, 1947, Part II of this Convention was excluded from acceptance.

Colombia has thus ratified 30 standard-setting international labour Conventions (the Final Articles Revision Convention, 1946, which it has also ratified, dealing essentially with procedural matters). In order to illustrate more clearly how these Conventions are applied in the country, they will be dealt with here by subject-matter.

Conventions concerning admission to employment

Colombia has ratified the following Conventions dealing with the subject of admission to employment: the Minimum Age (Industry) Convention, 1919; the Minimum Age (Sea) Convention, 1920; the Minimum Age (Trimmers and Stokers) Convention, 1921; and the Medical Examination of Young Persons (Sea) Convention, 1921.

These Conventions are fully applied in Colombia and have influenced national laws and regulations on the subject. Although there had previously been laws protecting children which stipulated a minimum age of admission to employment for certain types of work, it was only with the adoption of Act No. 6 of 1945 [1] that the minimum age of 14 was laid down for admission to employment as a general provision. Section 10 of that Act states: " Young persons who have attained the age of 14 years but not that of 18 years shall be entitled to enter into contracts of employment and to bring actions as specified above with the authorisation of the labour judge or sectional labour magistrate for the place where the contract is to be entered into, provided that the contract is for the performance of services in an establishment or trade which will not be morally or physically detrimental to the young person." The Code of Procedure in Labour Courts (Legislative Decree No. 2158 of 1948) [2] states in section 119 that the permits required by minors between 14 and 18 years of age " shall be issued by the labour inspector or, in default, by the mayor of the place in which the minor is to be employed ".

[1] I.L.O.: *Legislative Series* (hereafter referred to as *L.S.*), 1945—Col. 1.

[2] *L.S.*, 1948—Col. 2. The Code of Procedure in Labour Courts lays down the procedure for dealing with cases brought before the Special Labour Jurisdiction, which is a part of the judiciary and therefore independent of the Government. The Special Labour Jurisdiction deals with *legal* disputes arising directly or indirectly from the employment contract; it is not competent to deal with economic disputes between employers and workers.

The Substantive Labour Code [1] (Legislative Decrees Nos. 2663 [2] and 3743 [3] of 1950), which came into force on 1 January 1951, did not reproduce the formal prohibition of the employment of children aged under 14 laid down in Act No. 6 of 1945. This gave rise to observations both by the Committee of Experts on the Application of Conventions and Recommendations and by the Conference Committee on the Application of Conventions and Recommendations. The situation may now be considered satisfactory following the adoption of Act No. 73 of 1966 [4], " introducing certain changes in the labour legislation in order to apply the provisions of certain international labour Conventions ", since that Act specifies that " it shall be unlawful for young persons under 14 years of age to work in industrial . . . undertakings " and that " the employer shall be required to keep a register of all persons under the age of 18 years employed by him indicating the date of birth of each such person ", which thus complies exactly with the requirements of the Minimum Age (Industry) Convention, 1919. Decree No. 995 of 26 June 1968 contains the same list of " industrial " undertakings specified in the Convention in which employment of persons aged under 14 is prohibited, plus undertakings for the transport of passengers or freight by sea, thereby meeting the appropriate requirements of the Minimum Age (Sea) Convention, 1920. This decree " lays down regulations under Act No. 73 of 1966, as incorporated in the Substantive Labour Code through Decree No. 13 of 1967 ".

The Minimum Age (Trimmers and Stokers) Convention, 1921, is likewise applied through Act No. 73 of 1966, section 4 of which states that " young persons under the age of 18 years shall not be employed or work on sea-going vessels as trimmers or stokers ". It should, however, be pointed out in regard to this Convention and the Minimum Age (Sea) Convention, 1920, that the relevant standards were in fact already applied under provisions issued by the Colombian Merchant Marine Authority. It was on the basis of the instructions and powers laid down in Legislative Decree No. 3183 of 1952 that this Authority issued the Colombian Merchant Marine Regulations, which stipulate that the seaman's permit demanded under that decree for employment on board merchant vessels registered in Colombia should be granted only to persons whose military service situation is clear and who are able to provide evidence in the form of military registration papers. Since this cannot be

[1] The Substantive Labour Code governs relationships of a private nature under individual labour law and relationships both public and private under collective labour law. It lays down " the minimum rights and guarantees conferred on employees ". It has been amended and supplemented on several occasions either by decrees with the force of legislation or by Acts.

[2] *L.S.*, 1950—Col. 3 A.

[3] *L.S.*, 1950—Col. 3 B.

[4] *L.S.*, 1967—Col. 1 A.

done by a person aged under 18, which is the legal age for compulsory military service, or at least for conscription of recruits, the Medical Examination of Young Persons (Sea) Convention, 1921, which refers to young persons aged under 18, does not apply in Colombia in this respect.

Conventions concerning general conditions of employment

Colombia has ratified the following Conventions relating to general conditions of employment: the Hours of Work (Industry) Convention, 1919; the Weekly Rest (Industry) Convention, 1921; the Holidays with Pay Convention, 1936; the Minimum Wage-Fixing Machinery Convention, 1928; and the Protection of Wages Convention, 1949.

With regard to hours of work, Colombian legislation is in conformity with the ratified Convention, the influence of which on the various regulations in this field is very clear. For example when the General Labour Office issued Decision No. 1 of 1934 concerning hours of work, it referred to the Convention in one of the preambular paragraphs as follows: " Act No. 129 of 1931 approved Convention No. 1 adopted by the International Labour Conference, limiting the hours of work in industrial undertakings to eight in the day and 48 in the week." This decision was approved by Decree No. 895 of 1934, which bears the signatures of the President of the Republic and the Minister of Industry and concludes with the following words: " These provisions shall govern, in part, the application of Act No. 129 of 1931." In reference to the last part of the decree, it may be mentioned in passing that the fact of prior approval by a formal Act of Congress was considered at the time to mean that the provisions of a ratified Convention automatically became part of national law as would be the case for ordinary legislation, which is why the Government issued a decree laying down regulations in the matter. This is the only instance of this type that has occurred in Colombia in connection with international labour Conventions, since, as explained previously, present practice is based on the consideration that the provisions of a ratified Convention cannot become part of national law or be cited in dealings with the competent national authorities until legislation has been passed which goes beyond the mere approval of such Conventions.

In the same year (1934), on 20 November, legislation was adopted providing that " no employee shall be required to work more than eight hours per day " (Act No. 10, section 15). Subsequently Act No. 6 of 1945, dealing with various matters in the field of employment, laid down provisions concerning hours of work. This Act was immediately preceded by Legislative Decree No. 2350 of 1944, the validity of which was only transitional, since it was issued under constitutional powers vested in the Government in the event of a state of emergency. This decree referred to

ratified Conventions when it stated in one of the preambular paragraphs that " international obligations undertaken by the Republic demand that there should be no further delay in modernising employment provisions ". The standards concerning hours of work for private employees are now laid down in the Substantive Labour Code, while Act No. 6 of 1945 remains effective for public employees. In view of the fact that the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee had made certain observations regarding provisions of the Code in this respect, it was recently amended under Act No. 73 of 1966 through regulations contained in Decree No. 995 of 1968. Following the adoption of the Act and the decree it may now be considered that the present version of the Substantive Labour Code is in conformity with the requirements of the Hours of Work (Industry) Convention, 1919.

The first statutory provisions relating to the subject-matter of the Weekly Rest (Industry) Convention, 1921, were contained in Act No 57 of 1926, section 1 of which stated: " The provision of a day of rest following six days of work or every six days shall be compulsory in respect of every wage earner and salaried employee of an industrial or commercial establishment or any branch thereof, irrespective of the character of the establishment, whether public or private. The period of rest shall last not less than 24 hours and shall be granted on Sundays." The same section indicated some exceptions to the rule that Sunday should be the rest day, but this was immediately followed by the provision in section 2 that " persons subject to exceptions regarding the Sunday rest period shall be granted a compensatory weekly rest period equivalent to the period forgone ". Act No. 72 of 1931 supplemented these provisions and also stated that exceptions to the Sunday rest rule (as laid down in general terms in both of the Acts) should be specified in regulations. This was in fact done by means of Decree No. 1278 of 1931. Further provisions concerning the Sunday rest period were contained in Legislative Decree No. 2350 of 1944 and Act No. 6 of 1945. The latter remains in force for public employees whose conditions of employment are laid down by contract; for private employees this matter is now governed in conformity with the provisions of the Convention by the Substantive Labour Code, supplemented by Legislative Decree No. 2351 of 1965 [1] as regards remuneration.

Prior to the adoption of the Holidays with Pay Convention, 1936, certain standards had already been laid down in Colombia with regard to this subject. Act No. 72 of 1931, which is still in force for public employees, states in section 2: " Each wage earner and salaried employee of public establishments, offices or undertakings who has provided his services for one year without interruption shall be entitled to 15 days'

[1] *L.S.*, 1965—Col. 1.

holiday with pay." Section 14 of Act No. 10 of 1934 stated the right of private salaried employees to " 15 days' holiday with pay in respect of each year of service, on the basis of their ordinary remuneration ". Subsequently Decree No. 2350 of 1944 and Act No. 6 of 1945 extended this right to certain categories of wage earners.

This matter is now governed by the Substantive Labour Code in regard to all private employees. Following the amendment and implementation of Act No. 73 of 1966 and the entry into force of Decree No. 995 of 1968 laying down regulations under that Act, it may be considered that the Code meets the requirements of the Convention. Previously, the Code had permitted accumulation of the full holiday entitlement (15 working days per year of service), in most cases over a period of not more than two years, subject only to the consent of employer and worker, and in certain special cases over a period of not more than four years. Moreover, nothing had been done to apply the provisions concerning the recording of holidays, as laid down in Article 7 of the Convention, or with regard to holidays for minors, which were therefore subject to the general provisions relating to accumulation of holidays. The same was true of cash compensation in lieu of holidays, which the Code permits during the validity of the employment contract in respect of not more than half of the holidays; this was in conflict with Article 2, paragraph 2, of the Convention, which states that young persons shall be entitled, after the appropriate period of service, to an annual holiday with pay of at least 12 working days. It was in order to eliminate these irregularities that Act No. 73 of 1966 and Decree No. 995 of 1968 were promulgated. Under the new provisions " the employee shall be entitled to an uninterrupted holiday period of at least six working days each year; this minimum cannot be accumulated ". The parties may, however, agree that the remaining holiday entitlement be accumulated over a period of up to two or four years, depending on the circumstances. In addition, " it is forbidden to accumulate any part of holiday periods of workers aged under 18 during the validity of the employment contract or to provide compensation in lieu thereof; the said workers shall be granted the whole of their holiday entitlement in time, during the year following that in which entitlement was acquired "; and " in cases where cash compensation in lieu of not more than half the annual holiday period is authorised for persons aged over 18, such payment shall be considered invalid unless, at the time of payment, the employer also allows the worker to take the remaining leave entitlement in time ". It is also stipulated that " every employer shall keep a special register of holidays indicating the date on which each employee enters the undertaking, the dates on which he begins and ends his annual holidays and the remuneration received in respect of such holiday period ".

We shall now consider the way in which the Minimum Wage-Fixing Machinery Convention, 1928, has been applied in Colombia over the

years. In common with its predecessor, Decree No. 2350 of 1944, Act No. 6 of 1945 provided for minimum wage fixing by the Government " after obtaining the opinion of joint committees of employers and workers ". Before the Substantive Labour Code came into force such consultation of joint committees never in fact took place, but a minimum wage was fixed for the first time in the history of the country under Legislative Decree No. 3871 of 1949, as subsequently supplemented by Legislative Decree No. 70 of 1950; the regulations for the application of both of these decrees were laid down in Decree No. 71 of 1950. Next, the Substantive Labour Code dealt with the matter. First of all it defines what is involved, in section 146: " The minimum wage shall be the wage to which every employee is entitled in order to cover his normal requirements and those of his family, both in the material and in the moral and cultural spheres." It goes on to describe factors in fixing the minimum wage (section 147), the procedure for fixing the minimum wage (section 148) and the juridical effect (section 149). Section 148 states that " the Government shall be empowered by decree (such decree remaining in force for the period indicated therein), after consulting joint committees of employers and employees, to fix the minimum wages to be applied either in general, or in a particular region or branch of occupational, industrial or commercial activity, stock breeding or agricultural or forestry activity in any particular region ".

Joint committees were convened by the Government for the first time in 1955 under Decrees Nos. 1156 [1] and 2101 [2] of 1955. The consultation carried on with employers' and workers' representatives led to the adoption of Decrees Nos. 2118 and 2214 of 1956. The first of these set up a permanent national committee and lower committees in the administrative departments, on a tripartite basis (government, employers, workers), " for annual revision of minimum wages ", while the second fixed the scales of minimum wages, both urban and rural, for the various administrative departments of the country, with effect from 1 October 1956. The Committee of Experts on the Application of Conventions and Recommendations made certain observations on these two decrees in 1957 and repeated them in 1958. It pointed out that, while the Convention provides that the competent authorities may authorise payment of wages below the fixed minimum only when such lower wages are laid down by collective agreement, the decrees in question specified that in the event of the economic instability of an undertaking the minimum wage committees in the departments could authorise employers to pay their employees wages below the legal minimum, without restricting this possibility to cases approved by collective agreement. This situation was not changed with the adoption of Legislative Decree No. 118 of 1957, which

[1] *L.S.*, 1955—Col. 1 A.
[2] *L.S.*, 1955—Col. 1 B.

increased by 15 per cent. the minimum wages previously laid down under Decree No. 2214 of 1956. However, a change was introduced two years later, when Act No. 187 of 1959 established the National Wage Council on a tripartite basis. One of the functions of that Council is to " fix and revise minimum wages applicable in each economic region periodically, and not less than once every two years ". This Act did not empower the Council or any other authority to permit payment of wages below the fixed minimum. The Council has on two occasions fixed the national minimum wages. The respective decisions were approved by Decrees Nos. 2834 of 1961 and 1828 of 1962. Act No. 1 of 1963 provided for a general readjustment of wages for both public and private employees, and the minimum wage was also readjusted. With regard to the system of supervision and penalties to ensure observance of the minimum wages fixed, Act No. 187 of 1959 provides that labour inspectors, itinerant minimum wage supervision officers, mayors and police inspectors are responsible for proper application of the relevant standards and have the power to impose fines. Concerning the possibility for workers to recover sums due to them, the labour magistrates (who hear disputes arising either directly or indirectly from employment contracts) are competent to require the employer to pay the worker any amount by which the wages received have fallen short of the minimum. But section 5 of Act No. 187 goes even further; it concludes by stating that " when it is found by a labour court that an employee has received less than the minimum wage, an additional fine will be imposed on the employer and paid over to the employee, equivalent to the penalty paid in respect of wages and benefits, but in no case less than 500 pesos ".

When the Protection of Wages Convention, 1949, was ratified by Colombia in 1963 there was already legislation on the subject, namely sections 39, 40, 60, and 66 of the Substantive Labour Code, as well as Part V of the First Book of the Code, which is headed " Wages ". The standards laid down in the Code in this matter had already been foreshadowed to a certain extent by previous legislation—in particular by Act No. 6 of 1945 and Decree No. 2127 of 1945 laying down regulations under that Act—while the question of priority of wages over other liabilities of the employer in the event of bankruptcy was covered in general terms under section 2495 of the Civil Code, as amended by section 1 of Act No. 165 of 1941. The Convention did, however, influence present legislation in certain aspects, since the Substantive Labour Code was passed in 1950, one year after adoption of the Convention by the Conference and it contains new provisions very similar to provisions of the Convention. For example sections 139 and 140 concerning the obligation to pay wages direct to the worker and the place and time of such payment constitute a faithful transcription of Articles 5 and 13 of the Convention. The inspectorate of the Ministry of Labour is responsible for ensuring observance of the standards laid down in the Code, includ-

ing those relating to wages, as well as the provisions of Decree No. 2127 of 1945, which remains in force for public employees bound by an employment contract.

Conventions concerning employment of women

Colombia has ratified three Conventions referring specifically to the employment of women: the Maternity Protection Convention, 1919; the Night Work (Women) Convention, 1919; and the Equal Remuneration Convention, 1951.

In regard to these three Conventions it should be pointed out first of all that the only one that has not affected Colombian legislation, since the basic principles contained in it were already in force before its adoption by the Conference, is the Equal Remuneration Convention, 1951. The Substantive Labour Code, which was enacted in 1950, contains the following provisions in section 144: " For equal work, carried on in the same conditions with respect to the post occupied, hours of work and efficiency, equal wages must be paid, the said wages including all the elements referred to in section 128. No discrimination shall be made in the payment of wages on account of age, *sex*, nationality, race, religion, political opinions or trade union activity." This principle had already been included in Act No. 6 of 1945, section 5 of which stated that " any differences in wages paid to employees of one and the same undertaking . . . shall not in any case be based on differences of nationality, *sex*, age, religion, political opinions or trade union activities ". (Act No. 6 of 1945 remains in force for public employees bound by employment contracts with the public administration, except for employees of the national railways, who are covered by the Substantive Labour Code under the provisions of section 1 of Decree No. 3739 of 1954, stipulating that they shall come under the legal provisions relating to private employees.)

The influence of the other two Conventions has been seen in legislation. Although the legal situation still does not correspond exactly to the provisions of the Maternity Protection Convention, 1919, this Convention has served as a source for legislation since the adoption of the first laws in this connection in 1938, in the form of Acts Nos. 53 and 197, which were applied through Decrees Nos. 1632 and 2350 of 1938 and No. 1766 of 1939. The basic standards set by the Convention with regard to special maternity leave for women workers and the prohibition of dismissal during such period of leave were to a certain extent incorporated in the Substantive Labour Code. Subsequently, Act No. 90 of 1946 established the compulsory social insurance scheme and set up the Colombian Social Insurance Institution. When the Institution took over coverage of maternity two of the requirements under Article 3 of the Convention were met, namely that cash benefit in case of maternity should be provided under an insurance scheme and that women should

be entitled to the necessary obstetric care. As the Institution has continued to extend its range of action to take in further areas of the country, there has been a corresponding reduction in the extent of application of the relevant provisions laid down in the Substantive Labour Code, under which employers are responsible for paying cash benefit in case of maternity and no provision is made for obstetric care. Women workers in the public sector remain covered by Acts Nos. 53 and 197 of 1938, which entitle them to obstetric care under the provisions of Act No. 6 of 1945 concerning medical attendance and so forth, " where necessary ".

Recent amendments to the Substantive Labour Code introduced under Act No. 73 of 1966 were derived in part from the Maternity Protection Convention, 1919. This Act increases the duration of nursing breaks without loss of remuneration during the working day from 20 to 30 minutes and makes it absolutely unlawful to dismiss a worker during her maternity leave or during any period of sickness leave due to pregnancy or confinement; section 8 of that Act, amending section 241 of the Code, states: " Any notice of dismissal served by the employer on the female employee in the course of any of the above periods or any prior notice served in such a way as to expire in the course of the above-mentioned rest periods or sick leave shall be null and void." These amendments gained the approval of the competent committees of the I.L.O., which at the same time repeated their observations regarding the points where Colombian legislation is still not in conformity with the provisions of the Convention requiring 12 weeks' maternity leave, instead of the eight weeks allowed by Colombian legislation, and the payment of maternity benefit when prenatal leave is extended owing to miscalculation of the date of confinement by the physician or the midwife.

With regard to the Night Work (Women) Convention, 1919, Act No. 73 of 1966 amended section 244 of the Labour Code by prohibiting night work for women in industrial undertakings, thereby bringing it in line with Article 3 of the Convention.

Conventions on social security

In the field of social security Colombia has ratified the following Conventions: *(a)* with regard to sickness benefit, the Sickness Insurance (Industry) Convention, 1927; and the Sickness Insurance (Agriculture) Convention, 1927; *(b)* with regard to employment injury benefit, the Workmen's Compensation (Agriculture) Convention, 1921; the Workmen's Compensation (Accidents) Convention, 1925; the Workmen's Compensation (Occupational Diseases) Convention, 1925; and the Equality of Treatment (Accident Compensation) Convention, 1925.

Sickness insurance was, together with maternity, the first branch taken over by the Colombian Social Insurance Institution in 1949, under

section 9, paragraph 5, of Act No. 90 of 1946, which established the Institution. At present this branch is governed by Decision No. 107 of 1960 [1] issued by the Board of the Institution, laying down general regulations for non-occupational sickness insurance and for maternity insurance, as approved by Decree No. 2690 of 1960.[1] The number of persons protected under this scheme has regularly increased, since the Institution has adopted a policy of progressively extending coverage to new regions of the country. From a total of 45,679 insured persons in 1949 the figure has risen to some 600,000 in 1968. The essential aspects of the standards laid down in the above-mentioned regulations correspond to the provisions contained in the international labour Conventions relating to this subject, namely the Sickness Insurance (Industry) and (Agriculture) Conventions, 1927, particularly in regard to the duration of medical and pharmaceutical aid and the provision of cash benefit in the event of incapacity for work, as well as the administration and financing of insurance schemes.

Concerning employment accident benefit, the first item of legislation to be passed was Act No. 57 of 1915, providing protection for wage earners of undertakings listed in section 10 of that Act. Protection was subsequently extended under Act No. 133 of 1931 to salaried employees of the same undertakings (public light and water boards, railways, tram companies and navigation companies operating larger vessels, liquor and match factories, construction firms, mines and quarries, industrial undertakings using power-driven machinery and national public works). Later on, Act No. 6 of 1945 referred, *inter alia*, to employment accident benefit. Although it did not limit the categories of undertakings required to provide protection, as had been done in previous legislation, it graduated benefit according to the undertakings' capital so that as a general rule only employees of undertakings with a capital of over 125,000 pesos were entitled to the full range of benefit. In the same manner the Substantive Labour Code, which superseded the earlier legislation as from 1 January 1951, established similar exceptions to the general standard and continued to provide only for lump-sum benefit in the event of employment accident. All of these provisions are in conflict with the Workmen's Compensation (Accident) Convention, 1925, Articles 2 and 5. The exceptions allowed in accordance with the undertakings' capital go far beyond those permitted under Article 2 of the Convention. Moreover, payment of lump-sum benefit only is not in conformity with Article 5 of the Convention, which provides that " the compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments; provided that it may be wholly or partially paid in a lump sum if the competent authority is satisfied that it will be properly utilised ".

[1] *L.S.*, 1960—Col. 2.

In view of the divergences mentioned the Committee of Experts on the Application of Conventions and Recommendations made certain observations referring to the limits in time and to benefit in kind (medical, pharmaceutical, surgical and hospital aid and the necessary orthopaedic and prosthetic appliances) as laid down in the Substantive Labour Code, which establishes a limit of two years from the date of the accident, whereas Articles 9 and 10 of the Convention provide for such assistance as long as it is recognised to be necessary.

The situation was somewhat improved with the adoption of Decree No. 1698 of 1960, which approved the regulations for the compulsory employment injury insurance scheme. These regulations eliminated some of the divergences, but the Committee of Experts repeated some of its previous observations with regard to those remaining. Decree No. 1698 of 1960 in fact never came into force and was superseded by Decree No. 3170 of 1964 [1], approving Decision No. 155 of 1963 of the Board of the Colombian Social Insurance Institution, which laid down general regulations for the compulsory employment injury insurance scheme. Employment injury protection was taken over by the Institution from 1 July 1965, initially in respect of workers " who at the time when this insurance scheme comes into force are compulsorily covered by the non-occupational sickness insurance and maternity insurance scheme, in the regions where that scheme applies, subject to the exceptions established in the general regulations for the compulsory employment injury insurance scheme ", as stated in section 1 of Decision No. 169 of 1964 of the Board of the Institution (approved by Decree No. 3169 of 1964).

Following the adoption of Decree No. 3170 of 1964 the situation improved considerably in the regions of the country covered by the employment injury insurance scheme. The Committee of Experts had no observations to make on the standards laid down by the decree with regard to application of the 1925 Convention, and in 1967 it actually stressed the progress achieved in the following terms: " In connection with the observations and requests made in previous years . . . the Committee notes with satisfaction the promulgation of Decree No. 3170 of 21 December 1964 to approve regulations for the compulsory employment injury insurance scheme. " [2]

With reference to the Workmen's Compensation (Agriculture) Convention, 1921, which requires ratifying Members " to extend to all agricultural wage earners its laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment ", the legal situation is the following: sections 201 to 228 of the Substantive Labour Code (constituting the

[1] *L.S.*, 1964—Col. 1.

[2] I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, Fifty-first Session, Geneva, 1967 (Geneva, 1967), p. 46.

chapter on industrial accidents and occupational diseases) do not establish any exception or difference in regard to agricultural workers. It may therefore be stated that, in accordance with these rules, there is equality of treatment with regard to employment accident benefit for agricultural workers, industrial workers and workers engaged in any other sector of economic activity. Decree No. 3170 of 1964 does not provide for any exceptions or differences either, but section 7 states that agricultural workers in non-industrialised undertakings " shall be obliged to insure with the Colombian Social Insurance Institution . . . as soon as regulations are made prescribing the rules and conditions for such insurance ". The Committee of Experts, while observing that the regulations referred to in that section had not been approved, expressed its confidence that the necessary action would be taken in the near future.

The Equality of Treatment (Accident Compensation) Convention, 1925, is fully applied in Colombia. Neither the Substantive Labour Code nor Decree No. 3170 of 1964, section 7 of which expressly requires all national and foreign workers to be insured, establishes any difference of treatment in regard to employment accident benefit. Nor are there any provisions requiring residence in the country as a condition for entitlement to such benefit. Equality of treatment as required under the Convention is thus ensured.

With regard to the Workmen's Compensation (Occupational Diseases) Convention, 1925, although the schedules of occupational diseases contained in section 203 of the Substantive Labour Code and in Decision No. 191 of 1965 of the Colombian Social Insurance Institution do not fully correspond to the terms of the schedule in Article 2 of the Convention (the Institution has recently been requested by the Ministry of Labour to eliminate these divergences), Colombia exceeds the requirements of the Convention in other ways, since the list of occupational diseases is longer. The Substantive Labour Code and Decree No. 3170 of 1964 establish the same system of protection for persons who have contracted occupational diseases or their dependants as is laid down in regard to employment accidents, so that national laws and regulations are in conformity with the standards laid down in Article 1 of the Convention.

Conventions concerning basic human rights

Colombia has ratified three Conventions dealing with basic human rights: the Right of Association (Agriculture) Convention, 1921; the Equal Remuneration Convention, 1951; and the Abolition of Forced Labour Convention, 1957.

Since reference has already been made to the Equal Remuneration Convention, 1951, in the section relating to Conventions concerning the employment of women, only the other two will be dealt with here. The

first point to be made is that their standards were already applied under national legislation even before they were adopted by the Conference. When the Right of Association (Agriculture) Convention, 1921, was submitted for consideration by Congress in 1930, the Government's commentary on the Bill calling for its approval included the following statement: " With regard to this Convention, the General Labour Office has no observations to make in view of the fact that there is no provision in Colombia, either adopted by Congress or issued by any other public body, that restricts or denies the right of association of agricultural workers. The right of association is granted by the Constitution, Act No. 78 of 1919, concerning strikes, and Act No 21 of 1920, concerning conciliation and arbitration in labour disputes, to all wage earners and salaried employees without any form of distinction, in agriculture and industry. . . . For the above reasons the General Labour Office considers that Colombia can adhere to the Convention without any need for additional Acts or decrees." [1]

National legislation has at all times conformed in full with the provisions of the Convention, and at present the Substantive Labour Code, as Act No. 83 of 1931 and Act No. 6 of 1945 previously did, continues to grant identical rights to all workers with regard to freedom of association, without distinction or exclusion of any kind, so that, as stated in article 44 of the Constitution, " it is permissible to form companies, associations . . . which are not contrary to moral standards or law and order ". This constitutional principle is developed in the present context by section 370, paragraph 1, of the Substantive Labour Code, which reads as follows: " In accordance with the provisions of section 12, the State shall guarantee to employers, employees and self-employed persons the right of freely associating in defence of their interests, forming occupational and industrial associations, and shall guarantee to the said occupational or industrial associations the right to form groups or federations."

With regard to the Abolition of Forced Labour Convention, 1957, reference should be made to the antecedents of the present constitutional standards in this field. The Act of 21 July 1821 concerning freedom of slaves' children as from birth, emancipation of slaves and abolition of the slave trade provided that " the children of slaves who are born on or after the day of publication of this Act shall be free ", while the Act of 21 May 1851 abolished slavery in Colombia. Freedom of employment is a principle laid down in the Constitution, which prohibits slavery and, in common with the Substantive Labour Code, provides for free choice of employment and occupation. The Constitution also recognises the existence of political parties (article 172) and guarantees the right to strike, except in the public services (article 18), while the Substantive Labour

[1] *Leyes autógrafas de 1931*, Vol. XVII, op. cit.

Code states that disciplinary penalties may not consist of " corporal punishment or action offensive to the dignity of the worker " (section 112).

Conventions concerning labour administration

The three Conventions ratified by Colombia that deal with labour administration are the following: the Unemployment Convention, 1919; the Labour Inspection Convention, 1947 (excluding Part II, concerning labour inspection in commerce); and the Employment Service Convention, 1948.

With regard to the Unemployment Convention, 1919, the national authorities have endeavoured to fulfil its requirements since the promulgation of Act No. 73 of 1927, especially by establishing public employment exchanges and placement offices; however, since these did not produce the expected results they were subsequently abolished. The most recent experiment in this direction followed the adoption of Legislative Decree No. 2318 of 1953 [1], which established the Public Labour Exchange under the Ministry of Labour " for the purpose of dealing with and registering offers of and applications for employment and facilitating the solution of the unemployment problem ". Decree No. 3075 of the same year laid down regulations under this decree, while Legislative Decree No. 538 of 1954 established 17 public labour exchanges in various towns. Thirteen of these were subsequently abolished by Decree No. 1796 of 1956, reorganising the Ministry of Labour, and under this decree a Vocational Training and Placement Division was set up, to which four " placement offices " were attached, this being the new term used. These labour exchanges and placement offices failed to yield the results that had been hoped for, owing to the absence of adequate organisation. Those still in existence were therefore abolished as from 1 February 1960 under Decree No. 252 of that year. With I.L.O. technical co-operation, and using the extraordinary powers granted by Congress to the President of the Republic in 1968, it is now planned to reorganise the Ministry of Labour and to establish within it an Employment and Human Resources Division, in order to apply not just the 1919 Convention, ratified in 1933, but more particularly the Employment Service Convention, 1948, ratified in 1967.

Colombia ratified the Labour Inspection Convention, 1947, but excluded Part II from acceptance, as allowed by the Convention itself. At various times the national authorities have enacted measures in this field, some of them before the Convention was adopted by the Conference, such as Acts Nos. 73 of 1927, 12 of 1936 and 75 of 1945 and Legislative Decrees Nos. 666 of 1936, 2392 of 1938 and 1309 of 1946. The last of

[1] *L.S.*, 1953—Col. 2.

these set up the Division of General Inspection and Social Investigation on the same footing as the other branches within the Ministry of Labour, Health and Social Welfare, and defined its functions. Other measures have been enacted since the Convention was adopted. Reference will be made here only to those still in force. Legislative Decree No. 1631 of 1963 reorganised the Ministry of Labour, making it competent for all matters in respect of which the observance and strengthening of labour laws is necessary. The new structure provides not only for the operation of inspectorates within the regional offices coming under the central administration as regards both organisation and functions but also for the establishment of a special enforcement section within the Division of Occupational Medicine to supervise application of labour legislation relating to industrial medicine, health and safety. Decree No. 699 of 1966 follows up Legislative Decree No. 2351 of 1965 by making the labour inspectors responsible for enforcing provisions relating to conditions of work and the protection of workers in the exercise of their occupations. Section 41 of Decree No. 2351 empowers inspectors to require employers " to report to their offices for the purposes of obtaining information, examining books, registers, lists or other documents, or making copies or extracts of the same ". They may further enter any undertaking at any time and without previous notice, subject only to proof of their identity. In addition, they may impose fines. Nevertheless, in view of the fact that the labour inspectors also have functions of conciliation and since the budget of the Ministry of Labour has been insufficient to allow the number of inspectors to be brought up to the necessary strength, they have had difficulty in carrying out inspection as such. The recent ratification of the Labour Inspection Convention, 1947, will undoubtedly have a positive effect in ensuring that the Ministry has an adequate and effective inspection service in the immediate future, thereby meeting the requirements of the Convention.

Conventions concerning seafarers

In addition to the Conventions concerning the minimum age and medical examination of seafarers, which were discussed in the section of this article dealing with Conventions concerning admission to employment, Colombia has ratified the following Conventions respecting seafarers: the Placing of Seamen Convention, 1920; the Unemployment Indemnity (Shipwreck) Convention, 1920; the Seamen's Articles of Agreement Convention, 1926; and the Repatriation of Seamen Convention, 1926.

With regard to the Placing of Seamen Convention, 1920, in Colombia there are no private agencies for the placement of seafarers that are operated for purposes of profit. Shipowners have their own offices for direct recruitment.

Concerning the other three Conventions on seafarers ratified by Colombia, no laws specifically designed to put their provisions into effect have so far been passed. This does not mean that in practice the relevant standards, or at least a good part of them, have been neglected.

In common with workers in general, seafarers are covered by the Substantive Labour Code, whose standards of social protection are very enlightened; its provisions have been adapted and improved upon, with regard to seafarers, under collective agreements or arbitration awards governing employment relations between the Colombian merchant marine and its employees, who belong to the Colombian Union of Merchant Seamen, one of the most powerful and responsible trade unions in the country. Nevertheless, since the Government was anxious that the standards laid down in the Convention should be fully expressed in legislation, it introduced a Bill in Congress in 1965 laying down provisions governing seafarers' employment contracts. This Bill has been referred back to the Seventh Committee of the Senate after discussion in the House of Representatives, where some amendments and additional provisions were introduced.

Miscellaneous Conventions

In order to complete the analysis of ratified Conventions in relation to legislative provisions in Colombia, brief reference will be made to two Conventions not dealt with in any of the previous sections.

With regard to the White Lead (Painting) Convention, 1921, it should be noted that Act No. 73 of 1966 deals specifically with this subject in its section 9 (as incorporated in section 244 of the Substantive Labour Code under Decree No. 13 of 1967) in the following terms: " It is forbidden to employ young persons under 18 years of age and women in industrial painting work where white lead, lead sulphate or any other product containing these pigments are used." However, the Committee of Experts some years ago pointed out the need for provisions to be adopted that would prohibit the use of white lead and lead sulphate and regulate their use in specified circumstances, in accordance with the provisions of the Convention. The Ministry of Labour has therefore been in contact with the Ministry of Health in order to persuade it to take action on the Committee's observations whenever new provisions are issued regarding harmful substances.

With regard to the Night Work (Bakeries) Convention, 1925, application in Colombia comes up against serious difficulties (also noted in other countries), which may have been the reason why nothing came of a Bill presented to Congress in 1964 under which the Government would have been empowered to issue regulations concerning night work in bakeries in accordance with the Convention. In these circumstances the Government is now studying the most appropriate action.

The influence of unratified Conventions and of Recommendations

Although this article is concerned primarily with comparing national legislation with ratified Conventions it is appropriate to point out in general terms that several unratified Conventions and Recommendations have also influenced laws and regulations in Colombia. This is equally true of basic human rights, human resources development, labour-management relations, general employment conditions, the employment of women and young workers, and social security. A few examples will be given below.

Although Colombian legislation provided for recognition of freedom of association before the International Labour Conference adopted the Right to Organise and Collective Bargaining Convention, 1949 (and the Freedom of Association and Protection of the Right to Organise Convention, 1948), and guaranteed these rights for all workers (as the Substantive Labour Code continues to do), the influence of the 1949 Convention can be observed in the provisions of Decree No. 3378 of 19 December 1962 [1] to protect and regulate the right of association provided for in sections 370 and 371 of the Substantive Labour Code. This decree provides for fines to be imposed on any employer found guilty of violating trade union freedom of association, the particular offences listed including the following: *(a)* to make membership or non-membership of a trade union a condition for obtaining employment or remaining in employment or being considered fit to receive increments or bonuses of any kind; and *(b)* to dismiss or suspend workers or to modify their conditions of work on account of their activities directed towards the founding of trade unions, or, where such trade unions already exist, for the purpose of obstructing or hindering the exercise of their right of association.

With regard to human resources development it is important to note that before the Conference adopted the Vocational Training Recommendation, 1962, many of the principles it contains had already been put into effect in Colombia through SENA (the National Apprenticeship Service), under Legislative Decrees Nos. 118 and 164 of 1957, which established and organised its functional structure, as well as by Act No. 188 of 1959 [2] to regulate contracts of apprenticeship and Decree No. 2838 of 1960 [3] to make regulations under section 8 of that Act (the decree stipulating the percentage of apprentices who must be engaged by undertakings in proportion to their total adult labour force). While these standards were not influenced by the 1962 Recommendation and may, on the other

[1] *L.S.*, 1962—Col. 1.

[2] *L.S.*, 1960—Col. 3 B.

[3] *L.S.*, 1960—Col. 3 A.

hand, have affected its adoption, it is undoubtedly true that the Recommendation guided the National Council of SENA when it adopted Decisions Nos. 4 and 7 of 1963 laying down the general organisation of SENA as a national vocational training service, defining its objectives and establishing its scope and the training methods to be applied in carrying out its various programmes for young workers and adults.

Concerning security of employment, Legislative Decree No. 2351 of 1965 states, *inter alia*, that where a worker is dismissed without proper cause the employer shall pay compensation to the worker, which increases in proportion to the number of years of service in the case of contracts of indefinite duration. Where the workforce is reduced for reasons unrelated to the workers' ability or conduct or the completion of the work contracted for, the decree requires the employer first to apply to the Ministry of Labour for permission, explaining the reasons and providing the necessary evidence, where appropriate. Thus several of the standards incorporated in the Termination of Employment Recommendation, 1963, are applied through this decree.

In connection with the employment of women and young workers, Act No. 73 of 1966 took into account not only the ratified Conventions mentioned above in reference to that Act but also the following unratified Conventions: the Night Work of Young Persons (Industry) Convention, 1919; the Minimum Age (Agriculture) Convention, 1921; the Underground Work (Women) Convention, 1935; and the Minimum Age (Underground Work) Convention, 1965.

As regards social security, in addition to the risks already covered (see the section on Conventions concerning social security) and apart from family benefit granted to wage earners in proportion to the number of dependent children satisfying the prescribed conditions [1], a compulsory invalidity, old-age and survivors' scheme was introduced on 1 January 1967. This scheme is administered by the Colombian Social Insurance Institution in accordance with regulations approved under Decree No. 3041 of 19 December 1966. At the end of 1968 some 710,000 employees were protected, corresponding to 21 per cent. of the wage-earning population. This decree represents an example of the way in which unratified Conventions—in the particular instance the relevant provisions of the Social Security (Minimum Standards) Convention, 1952—have influenced national regulations. Furthermore, the decree already covered the essential aspects of the Invalidity, Old-Age and Survivors' Benefit Convention, 1967.

[1] Family benefit was established by Legislative Decree No. 118 of 1957 under the designation of " family subsidy " and is administered through the system of family equalisation funds, whose resources are drawn exclusively from contributions payable by employers with a capital of not less than 50,000 pesos or employing not less than ten permanent workers (Act No. 58 of 1963). Their contribution is equivalent to 4 per cent. of the full wage bill for all employees whether or not the latter have children.

Conclusions

The foregoing pages will have shown that Conventions and Recommendations have influenced Colombian legislation and that the Government is particularly anxious to eliminate the remaining divergences from certain ratified Conventions. In recent years the Government has been greatly helped in this work by the existence of a specialised unit within the Ministry of Labour dealing with all matters concerning the International Labour Organisation. Since 1963 that department has been responsible for direct relations with the Organisation on behalf of the Government, thereby putting into effect a principle stated in article 11 of the Constitution of the I.L.O.

The influence of international labour standards will undoubtedly be even greater in the future, since a recent decree amended the structure of the National Labour Council, endowing it with greater vitality and including among its important functions that of assessing the desirability of applying standards laid down in the Conventions and Recommendations of the International Labour Organisation. The preamble to this decree (No. 2210 of 12 August 1968) relates the tripartite structure of the Council not only to the Declaration of Philadelphia, which proclaims the need to achieve " the collaboration of workers and employers in the preparation and application of social and economic measures ", but also to the Consultation (Industrial and National Levels) Recommendation, 1960, which states that appropriate measures should be taken to promote effective consultation and co-operation at the national level between public authorities and employers' and workers' organisations " with a view to developing the economy as a whole . . ., improving conditions of work and raising standards of living ".

This is just one of the many important cases where I.L.O. principles and standards have weighed heavily in the decisions taken by the national authorities.