

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/1595
27 January 1950

ORIGINAL: ENGLISH

Tenth session

Item 16 of the provisional agenda

TRADE UNION RIGHTS (Freedom of Association)

Communication from the Director General of the
International Labour Office

1. The Secretary-General has received the following letter dated 19 January 1950 from the Director General of the International Labour Office. In the progress report document E/1566, presented to the Economic and Social Council and circulated to governments pursuant to the request made in the penultimate paragraph of Resolution 239 (IX), it was stated that a further report indicating any action taken by the Governing Body and any observations which the Governing Body may wish to make upon the Secretary-General's comments would be made available to the Economic and Social Council and to member states immediately after the 110th Session of the Governing Body.
2. The letter from the Director General of the International Labour Office, which is reproduced in this document may be considered as the further report contemplated in the introductory note to document E/1566.

/Letter from
E/1595

Letter from the Director General of the International
Labour Office to the Secretary-General of the United
Nations, dated 19 January 1950

Sir,

1. I have the honour to inform you that the Governing Body of the International Labour Office, in the course of its 110th Session held at Mysore, examined the proposals relating to the establishment of a Fact-Finding and Conciliation Commission on Freedom of Association communicated to you with my letter of 19 November 1949 and the comments on these proposals communicated to me on your behalf by the Assistant Secretary-General in charge of Social Affairs by his letter of 9 December 1949.
2. I have the honour to request you to inform the Economic and Social Council that the Governing Body, after examining these proposals and comments, decided, on 6 January 1950, to establish the Fact-Finding and Conciliation Commission on Freedom of Association referred to in the resolution adopted by the Governing Body on 20 June 1949 and communicated to the Economic and Social Council at its Ninth Session, and also agreed, in accordance with the request made by the Economic and Social Council in its resolution of 2 August 1949, to establish this Commission on behalf of the United Nations in accordance with the relationship agreement between the two organizations.
3. The Governing Body decided that the Commission will consist of nine persons appointed by the Governing Body. These persons will be chosen for their personal qualifications and will be expected to discharge their duties with complete independence. The Commission will be authorized to arrange for its work to be done when appropriate by panels of not less than three nor more than five members.
4. The Governing Body confirmed the terms of reference of the Commission envisaged by the proposals approved by it on 22 June 1949. These terms of reference are as follows:

"It would be open to the Governing Body to refer to the Commission for impartial examination any allegations or infringements of trade union rights which the Governing Body, or the Conference acting on the report of the Credentials Committee, considers it appropriate to refer to the Commission

The Secretary-General,
United Nations,
LAKE SUCCESS,
New York

/for investigation.

for investigation. It would also be open to any Government against which an allegation of the infringement of trade union rights is made to refer such an allegation to the Commission for investigation. The Commission would be essentially a fact-finding body, but would be authorized to discuss situations referred to it for investigation with the Government concerned with a view to securing the adjustment of difficulties by agreement."

5. The Governing Body approved the following arrangements for the working of the Commission:

(i) With the exception of cases covered by Article 26 of the I.L.O. Constitution, no complaint will be referred to the Commission without the consent of the Government concerned. If the Governing Body is of the opinion that a complaint should be investigated it will first seek the consent of the Government concerned. If such consent is not forthcoming, the Governing Body will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case, including measures to give full publicity to the charges made, together with any comments by the Government concerned, and to that Government's refusal to co-operate in ascertaining the facts and in measures of conciliation. It was contemplated that the consent of any Government might be given either in an individual case or more generally in advance for certain categories of case or for any case which might arise.

(ii) Any communication proposing reference of matters to the Commission which may be received by the International Labour Office from Governments or from trade union or employers' organizations (other than formal requests from the General Assembly or the Economic and Social Council) will be examined in the first instance by the Officers of the Governing Body. If the Officers of the Governing Body consider that such communications warrant circulation to the members of the Governing Body as a whole, they will then be so circulated, and it will be open to any member of the Governing Body to take the matter up and suggest the reference of the case to the Commission. The Governing Body decided that communications from sources other than those mentioned above should not be receivable.

(iii) The Commission will report to the Governing Body and it will be for the Governing Body to consider in the first instance what further action

/shall be taken

shall be taken on the basis of the report. Subject to the above arrangements and understandings the Commission will work out its own rules of procedure.

6. The reference to Article 26 of the I.L.O. Constitution contained in paragraph 5 (1) above is designed to make it clear that the arrangements approved by the Governing Body at Mysore do not in any way replace the existing provisions of Articles 24 to 34 of the Constitution of the International Labour Organisation. In virtue of Articles 24 and 25 of the Constitution any industrial association of employers or workers may make a representation that a State for which any Convention, including the Freedom of Association and Protection of the Right to Organize Convention, 1948, or the Right to Organize and Collective Bargaining Convention, 1949, is in force is failing to secure the effective observance within its territories of the provisions of the Convention or Conventions to which it is a party, and the Governing Body may publish the representation and any statement made in reply to it. In virtue of Articles 26 to 34 any Member may file a complaint that another Member which is a party to one of these Conventions is failing to give effect thereto and the Governing Body may refer such a complaint to a Commission of Enquiry. The Governing Body may also adopt the same procedure of its own motion or on receipt of a complaint from a delegate to the Conference. When the Commission of Enquiry has fully considered the complaint, it has to prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think appropriate as to the steps which should be taken to meet the complaint and the time within which they should be taken. Any Government concerned in a complaint which does not accept the recommendations contained in the report of the Commission of Enquiry may refer the complaint to the International Court of Justice. In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith. These procedures provided for in the Constitution are applicable irrespective of the consent of the State concerned, subject only to that State having ratified the Convention non-observance of which is alleged. The arrangements approved by the Governing Body at Mysore do not impair or qualify these provisions of the Constitution in any way.

/7. The Governing

7. The Governing Body also decided to communicate to the Economic and Social Council for its consideration the following suggestions concerning the manner in which the services of the Commission might be made available to the appropriate organs of the United Nations.

(i) It should be open to the Economic and Social Council and to the General Assembly to refer allegations of infringements of trade union rights to the Commission.

(ii) All allegations against I.L.O. Member States presented by the General Assembly or the Economic and Social Council should be forwarded to the Governing Body for its consideration as to referral to the Commission.

(iii) All allegations against non-I.L.O. Member States presented by the General Assembly or the Economic and Social Council should be transmitted to the Commission through the Governing Body.

(iv) Before the Governing Body refers to the Commission an allegation which it has received against a non-I.L.O. State by a Member of the United Nations, the allegation should be referred to the Economic and Social Council for its consideration.

(v) The Commission's reports should be addressed to the requesting body, whether the General Assembly, the Economic and Social Council, the International Labour Organisation or the Governing Body. Such reports addressed to the General Assembly or the Economic and Social Council would be transmitted through the Governing Body.

(vi) A general account of the work of the Commission would be contained in the annual report of the International Labour Organisation to the United Nations.

(vii) In any case in which it appeared to the Governing Body, when examining the Commission's report, that questions involving human rights in general were involved, the Governing Body would draw the matter specifically to the attention of the Economic and Social Council.

(viii) The Secretary-General of the United Nations would communicate to the Director-General of the International Labour Office communications relating to trade union rights received by him in accordance with the procedure laid down by the Economic and Social Council for the examination of communications concerning human rights and such communications would be dealt with by the International Labour Organisation in accordance with the

/procedure

procedure indicated in paragraph 5 (ii) above.

8. I would appreciate it if you would bring these suggestions to the attention of the Economic and Social Council at its forthcoming session, and inform me in due course, for the information of the Governing Body, of the views of the Council concerning them.
