

OUTLINE OF THE EXISTING PROCEDURE FOR
THE EXAMINATION OF COMPLAINTS ALLEGING
INFRINGEMENTS OF TRADE UNION RIGHTS

Pursuant to the wish expressed by the Governing Body at its 160th Session (Geneva, 17-20 November 1964), an outline of the existing procedure for the examination of complaints filed with the International Labour Organisation concerning encroachments upon the exercise of trade union rights is attached hereto-

The outline given below of the existing procedure for the examination of complaints alleging infringements of trade union rights is based on the provisions adopted by common consent by the Governing Body of the International Labour Office and the Economic and Social Council of the United Nations in January and February 1950, and also on the decisions taken by the Governing Body at its 117th Session (November 1961), its 123rd Session (November 1953), its 132nd Session (June 1956), its 140th Session (November 1958), its 144th Session (March 1960), its 175th Session (May 1969) and its 184th Session (November 1971) with respect to its internal procedure for the preliminary examination of complaints, and lastly on certain decisions taken by the Committee on Freedom of Association itself.

1. In January 1950 the Governing Body, following negotiations with the Economic and Social Council of the United Nations, decided to set up a Fact-Finding and Conciliation Commission on Freedom of Association and defined the terms of reference of the Commission, the general lines of its procedure, and criteria for its composition. It also decided to communicate to the Economic and Social Council a certain number of suggestions with a view to formulating a procedure for making the services of the Commission available to the United Nations.
2. The Economic and Social Council, at its Tenth Session, on 17th February 1950, noted the decision of the Governing Body and adopted a resolution in which it formally approved this decision considering that it corresponded to the intent of the Council's resolution of 2 August 1949 and that it was likely to prove a most effective way of safeguarding trade union rights. It decided to accept, on behalf of the United Nations, the services of the ILO and the Fact-Finding and Conciliation Commission as established by the ILO, and laid down a procedure, which was supplemented in 1953, under which it would refer to the ILO complaints received by the United Nations concerning Members of the United Nations which are also Members of the ILO.
3. The procedure upon which the Economic and Social Council and the Governing Body reached agreement consists essentially of the following arrangements.
4. All allegations regarding infringements of trade union rights received by the United Nations from governments of trade union or employers' organisations against ILO member states will be forwarded by the Economic and Social Council to the Governing Body of the International Labour Office, which will consider the question of their referral to the Fact-Finding and Conciliation Commission.¹

5. Similar allegations received by the United Nations regarding any Member of the United Nations which is not a Member of the ILO will be transmitted to the Commission through the Governing Body of the ILO when the Secretary-General of the United Nations, acting on behalf of the Economic and Social Council, has received the consent of the Government concerned, and if the Economic and Social Council considers these allegations suitable for transmission. If the government's consent is not forthcoming, the Economic and Social Council will give consideration to the position created by such refusal, with a view to taking any appropriate alternative action calculated to safeguard the rights relating to the freedom of association involved in the case.²

6. If the Governing Body has before it allegations regarding infringements of trade union rights that are brought against a Member of the United Nations which is not a Member of the ILO, it will refer such allegations in the first instance to the Economic and Social Council.³

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¹ See First Report of the Committee of Freedom of Association, paragraph 19. The reports of the Committee on Freedom of Association quoted in this paper will be found in the following documents: First and Third Reports in Sixth Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1952), Appendix V, pp. 169-198 and pp. 225-237; Sixth Report, in Seventh Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1953), Appendix V, pp. 229-396; Ninth Report, in Eighth Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1954), Appendix II, pp. 166-173; 19th Report, in Official Bulletin, Vol. XXXIX, 1956, No. 4, pp. 101-142; 29th, 33rd and 43rd Reports in *ibid.*, Vol. XLIII, 1960, No. 3, pp. 77-81, 147-169 Reports in *ibid.*, and 246-265; 111th Report, in Official Bulletin, Vol. LII, 1969, No. 4, pp. 2-4; 127th Report, doc. GB.184/8/15, pp. 4-8.

² See first report of the Committee, paragraph 20.

³ See *ibid.*, paragraph 21.

7. In accordance with a decision originally taken by the Governing Body, complaints were submitted in the first instance to the Officers of the Governing Body for preliminary examination. Following discussions at its 116th and 117th Session, the Governing Body decided to set up a Committee for Freedom of Association to carry out this preliminary examination.

8. At the present time, therefore, there are three bodies which are competent to hear complaints alleging infringements of trade union rights that are lodged with the ILO, viz. the Committee on Freedom of Association set up by the Governing Body, the Governing Body itself, and the Fact-Finding and Conciliation Commission on Freedom of Association. The rules of procedure applied by these bodies on the subject are described below.

RECEIVABILITY OF COMPLAINTS

9. Complaints lodged with the ILO either directly or via the United Nations must come either from organisations of workers or employers or from governments.¹ Allegations are receivable only if they are submitted by a national organisation directly interested in the matter, by international organisations of employers or workers having consultative status with the ILO, or other international organisations of employers or workers where the allegations relate to matters directly affecting their affiliated organisations.²

10. Complaints must be presented in writing, duly signed by a representative of a body entitled to present them and must be as fully supported as possible by proof of allegations relating to specific infringements of trade union rights.³

11. When the Committee receives, either directly or through the United Nations, mere copies of communications sent by organisations to third parties, it has hitherto taken the view that such communications did not constitute formal complaints and did not call for action on its part.

12. Complaints originating from assemblies or gatherings which are not bodies having a permanent existence or even bodies organised as definite entities and with which it is impossible to correspond, either because they have only a temporary existence.

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1. See First Report of the Committee, paragraph 14.
2. See Twenty-Ninth Report of the Committee, paragraph 9.
3. See Ninth Report of the Committee, paragraph 20. See also paragraph 14 of the present document.

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or because the complaints do not contain any addresses of the complainants, are not receivable.¹

13. The Committee does not take cognisance of complaints presented by persons who, through fear of reprisals, request that their names or the place of origin of the complaints should not be disclosed, except where the Director General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints.²

Rules concerning Relations with Complainants.

14. Complaints which do not relate to specific infringements of trade union rights are referred by the Director General to the Committee on Freedom of Association for opinion, and the Committee decides whether any action should be taken on them or not.³ In cases of this kind, the Director-General is not bound to wait until the Committee meets, but may contact the complainant organisation directly to inform it that the Committee's mandate only permits it to deal with questions concerning freedom of association and to ask it to specify, in this connection, the particular points that it wishes to have examined by the committee.⁴

15. In any case in which a complaint relates to exactly the same infringements as those concerning which the Committee has already given a decision, the Director-General may refer the complaint in the first place to the Committee, which decides whether action should be taken or not.⁵

16. Apart from the two classes of cases referred to in paragraphs 14 and 15 above, the Director-General, on receiving a complaint, either direct from the complaining organisation or through the United Nations, informs the complainant that any information he may wish to furnish in substantiation of the complaint should be communicated to the Director-General within a

1. See 19th Report of the Committee, paragraph 13.
2. Decision taken by the Committee at its 19th Session (Feb 1958)
3. See Ninth Report of the Committee, paragraph 21.
4. See 11th Report of the Committee, paragraph 16-
5. See ninth Report of the Committee, paragraph.24.

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period of one month. In the event that supporting information is sent to the ILO after the expiry of the one-month period provided for in the procedure, it will rest with the Committee to determine whether this information constitutes new evidence which the complainant would not have been in a position to adduce within the appointed period; in the event that the Committee considers that this is not the case, the information in question is regarded as irreceivable.¹

17. If the complainant does not furnish the necessary information in substantiation of a complaint (where it does not appear to be sufficiently substantiated) within a period of one month from the date of the Director-General's acknowledgement of receipt of the complaint, it for the Committee to decide whether any further action in the matter is appropriate.

18. In cases in which the Committee is called upon to examine complaints presented by organisations concerning which no real information is available to it, the Director-General is authorised to request the organisation to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organisation.²

19. In cases in which a considerable number of copies of an identical complaint are received from separate organisations, the Director-General is not required to request each separate complainant to furnish further information; it is normally sufficient for the Director-General to address the request to the central organisation in the country to which the bodies presenting the copies of the identical complaint belong or, where the circumstances make this impracticable, to the authors of the first copy received, it being understood that this does not preclude the Director-General from communicating with more than one of the said bodies if this appears to be warranted by any special circumstances of the particular case. The Director-General will transmit to the government concerned the first copy received, but will also inform the government of the names of the other complainants presenting the copies of the identical complaints.³

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1. Decision taken by the Committee at its 33rd Session (Feb' 1963)
2. See 19th Report of the Committee, paragraph 11; 11th Report of the Committee, paragraph 15.
3. See 19th Report of the Committee, paragraph 12.

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20. When a complaint has been communicated to the Government 1 concerned and the latter has presented its observations thereon, and when the statements contained in the complaint and the government's observations merely cancel one another out but do not contain any valid evidence, thereby making it impossible for the Committee to reach an informed opinion, the Committee is authorized, without disclosing the government's replies, to seek further information in writing from the complainant in regard to questions concerning the terms of the complaint requiring further elucidation. 2 In such cases, it has been understood, that, on the one hand, the government concerned, as defendant, would have an opportunity to reply in its turn to any additional comments the complainants may make, and on the other hand, that this method would not be followed automatically in all cases but only cases where it appears that such a request to the complainants would be helpful in establishing the facts.

21. Subject to the two conditions mentioned in the preceding paragraph, the Committee may, moreover, inform the complainants, in appropriate cases, of the substance of the government's observations and invite them to submit their comments thereon within a given period of time. 3

22. In order to keep the complainant regularly informed of the principal stages in the procedure, the complainant is notified, after each session of the Committee, that the complaint has been put before the Committee and, if the Committee has not reached a conclusion appearing in its report, that - as appropriate - examination of the case has been adjourned in the absence of a reply from the government, or the Committee has asked the government for certain additional information. 4

Rules for Relations with the Governments Concerned

23. If the original complaint or any further information received in response to the acknowledgement of the complaint is sufficiently substantiated, the complaint and any such further information are communicated by the Director-General to the government concerned as quickly as possible; at the

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- 1 See paragraph 23-31 below.
- 2 Decision taken by the Governing body at its 123rd session (November 1953); see 33rd Report of the Committee, paragraph 100-101; 11th Report, paragraph 10.
- 3 See 127th Report of the Committee, paragraph 15.
- 4 See 11th Report of the Committee, paragraph 15.

same time the government is requested to forward to the Director-General, before a given date, fixed in advance with due regard to the date of the next meeting of the Committee, any observations which it may care to make. When communicating allegations to governments, the Director-General draws their attention to the importance which the Governing Body attaches to receiving the governments' replies within the specified period, in order that the Committee may be in a position to examine cases as soon as possible after the occurrence of the facts to which the allegations relate.1

24. If the Director-General has any difficulty in deciding whether a particular complaint can be regarded as sufficiently substantiated to justify him in communicating it to the government concerned for its observations, it is open to him to consult the Committee before taking a decision on the matter. 2

25. A distinction is drawn between urgent and less urgent cases. Matters involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, and cases arising out of a continuing state of emergency and cases involving the dissolution of an organisation are treated as cases of urgency.3 Priority of treatment is also given to cases on which a report has already been submitted to the Governing Body.4

26. In dealing with urgent cases the following provisions are applied: (a) the special attention of the government is called, when the complaint is communicated to it, to the fact that the case falls within the category of cases regarded by the Governing Body as urgent, and the government is specially requested in the name of the Governing Body to furnish for this reason a particularly speedy reply in regard to the urgent aspects of the case; (b) cases of urgency are dealt with by the Committee on a priority basis; (c) the Committee, at each session, must adopt as early as possible in the course of the session its report on urgent cases to facilitate the immediate consideration of the report by the Governing Body; (d) while the case remains under consideration, the Committee is authorised in urgent cases to make appropriate recommendations for the protection of the parties concerned.5

- 1 See Ninth Report of the Committee, paragraph 26 & 28.
- 2 See Ninth Report, paragraph 23. See also paragraph 14 above.
- 3 See 29th Report of the Committee, paragraph 13.
- 4 See 43rd Report of the Committee, paragraph 4 & 5
- 5 See 20th Report of the Committee, paragraph 12.

27. In respect of cases not classed as urgent, the report of the Committee circulated at the November Session of the Governing Body is considered by the Governing Body in March, that circulated in March is considered in May and that circulated in May is considered at the Governing Body sittings following the June session of the Conference. 1

28. In respect either of urgent or non-urgent cases, if the first reply from the government in question is of too general a character, the Committee requests the Director-General to obtain all necessary additional information from the government on as many occasions as it judges appropriate. 2

29. ~~28.~~ In all cases of this kind, the Director, General is further empowered to ascertain - without, however, thereby being obliged to examine their merits - whether the observations of governments, the subject-matter of a complaint or governments' replies to requests for further information are sufficient to permit the Committee to examine the complaint and, if not, to write directly to the government concerned, in the name of the Committee and without waiting for its next session, to inform it that it would be desirable if it were to furnish more precise information on the points raised by the Committee or the complainant. 3

30. In cases where governments delay in forwarding their observations on the complaints communicated to them, or the further information requested of the, the Committee mentions these governments in a special introductory paragraph to its reports after the lapse of a reasonable time, which varies according to the nature of the case and the degree of urgency of the questions involved. This paragraph contains a pressing appeal to the governments concerned and, as soon as possible afterwards, special communications are sent to these governments by the Director-General on behalf of the Committee. 4

31. At the subsequent stage, if certain governments still fail to reply, they are warned, in a special introductory paragraph to the Committee's reports - and by an express communication from the Director-General - that at its following session the Committee might submit a report on the

- 1 See 29th Report of the Committee, paragraph 12.
- 2 See First Report of the Committee, paragraph 31.
- 3 See 11th Report of the Committee, paragraph 19.
- 4 See 127th Report of the Committee, paragraph 16.

substance of the matter, even if the information awaited from the governments in question has still not been received.

32. In the cases described in the two preceding paragraphs, the ILO regional offices may, in appropriate circumstances, be called upon to approach the governments concerned to draw their attention to the importance of supplying the observations or information requested of them. 2

33. In cases where the governments implicated are obviously unwilling to co-operate, the Committee may recommend, as an exceptional measure, that wider publicity be given to the allegations, to the recommendations of the Governing Body and to the obstructive attitude of the governments concerned. 3

34. At various stages in the procedure, recourse may be had to the direct contact method whereby an ILO representative is sent to the country concerned with a view to seeking a solution to the difficulties encountered, either during the examination of the case or at the stage of the action to be taken on the recommendations of the Governing Body. 4 Such contacts, however, can only be established at the invitation of the governments concerned or at least with their consent. The ILO representative can be an independent person appointed by the Director-General. It goes without saying, however, that the mission of the ILO representative is above all to ascertain the facts and to seek possible solutions on the spot, the Committee and the Governing Body remain fully competent to appraise the situation at the outcome of these direct contacts. 5

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Preliminary Examination of Complaints
by the Committee on Freedom of Association.

Composition and Functioning of the Committee.

35. The Committee consists of nine regular and nine substitute members, chosen from among the Government group, the Employers' group and the Workers' group of the Governing Body, three regular and three substitute members from each group. Each member sits in a personal capacity.

36. No representative or national of the State against which a representation has been made or person occupying an official position in the national association of employers or workers which has made the representation may participate in the Committee's deliberations or even be present in the room during the hearing of the complaint in question.

37. Substitute members - Government, Employer and Worker - who are present and who so request may participate in the discussion of the cases before the Committee, irrespective of whether all the regular members are present or not. It has, however, not been usual for substitute members to participate in discussions except when replacing a regular member for the purposes of the particular case. Substitute members are bound, in the same manner as regular members, by the rule laid down by the Governing Body and referred in paragraph 36 above.²

38. The Committee always endeavours to reach unanimous decisions. In the event of a vote, substitutes do not vote when all the regular members for the group are voting. In the event of a regular Government member being absent or disqualified in respect of a particular case under consideration (see paragraph 36 above), the Government member appointed by the Governing Body as the particular substitute for that regular member replaces him. The right to record an abstention may be exercised on the same conditions as the right to record an affirmative or negative vote.³

39. If both a regular Government member and his appointed substitute are not available when the Committee is considering a particular case, the Committee calls upon one of the remaining substitute members to complete the quorum of three, in selecting such substitute member, the Committee has regard to seniority and also to the rule referred to in paragraph 36 above.⁴

¹ See First Report of the Committee, paragraph 24, see also 29th Report of the Committee, paragraphs 4 and 5.

² Decision taken by the Committee at its 19th Session (February 1958).

³ Ibid.

⁴ Ibid.

Hearing of the Parties.

40. The Committee may request and obtain from the Governing Body authorisation to hear the representatives of governments concerned before it submits its final recommendations to the Governing Body. ¹

Max Mandate and Responsibility of the Committee.

41. The responsibilities of the Committee are essentially to consider for recommendation to the Governing Body whether cases are worthy of examination by the Governing Body.

42. The Committee (after preliminary examination, including the consideration of any observations made by the governments concerned, if received within a reasonable period of time) reports to the next session of the Governing Body that a case does not call for further examination if it finds, for example, that the alleged facts, if proved, would not constitute an infringement of the exercise of trade union rights, or that the allegations made are so purely political in character that it is undesirable to pursue the matter further, or that the allegations made are too vague to permit a consideration of the case on its merits, or that the complainant has not offered sufficient evidence to justify reference of the matter to the Fact-Finding and Conciliation Commission. ²

42. The Committee may recommend the Governing Body to communicate the conclusions of the Committee to the governments concerned, drawing their attention to the anomalies which it has observed and inviting them to take appropriate measures to remedy the situation.

44. In all cases where it suggests that the Governing Body should make recommendations to a government, the Committee adds to its conclusions on such cases a paragraph proposing that the government concerned be invited to state, after a reasonable period has elapsed and taking account of the circumstances of the case, what action it has been able to take on the recommendations made to it. ³

45. A certain distinction is made between countries which have ratified one or more Conventions on freedom of associations and those which have not.

46. In the first case (ratified Conventions) examination of the action taken on the recommendations of the Governing Body is normally entrusted to the Committee of Experts on the

¹ See First Report of the Committee, paragraphs 119-142.

² See First Report of the Committee, paragraph 25.

³ See 127th Report of the Committee, paragraph 25.

Application of Conventions and Recommendations, whose attention is specially drawn in the concluding paragraph of the Committee's reports to discrepancies between national laws and practice and the terms of the Conventions, or to the incompatibility of a given situation with the provisions of these instruments. Clearly, this possibility is not such as to hinder the Committee from examining, through the procedure outlined ~~above~~ below, the effect given to certain recommendations made by it, this can be of use taking into account the nature or urgency of certain questions.¹

47. In the second case (non-ratified Conventions), if there is no reply, or if the reply given is partly or entirely unsatisfactory, the matter may be followed up periodically, the Committee instructing the Director-General at suitable intervals according to the nature of each case, to remind the government concerned of the matter and to request it to supply information as to the action taken on the recommendations approved by the Governing Body. The Committee ~~itself~~ itself, from time to time, reports on the situation.²

48. The Committee may recommend the Governing Body to attempt to secure the consent of the government concerned to the reference of the case to the Fact-Finding and Conciliation Commission. The Committee submits to each session of the Governing Body a progress report on all cases which the Governing Body has determined warrant further examination. In every case in which the government against which the complaint is made has refused to consent to referral to the Fact-Finding and Conciliation Commission or has not within four months replied to a request for such consent, the Committee may include in its report of the Governing Body recommendations as to the "appropriate alternative action" which the Committee may believe the Governing Body might take. In certain cases, the Governing Body itself has discussed the measures to be taken where a government has not consented to a referral to the Fact-Finding and Conciliation Commission.

Examination of Complaints by the Governing Body.

49. It is open to the Governing Body to refer to the Fact-Finding and Conciliation Commission for impartial
examination

¹ See 127th Report of the Committee, paragraph 27.

² Ibid, paragraph 28.

³ See First Report of the Committee, paragraph 25.

any allegations of infringements of trade union rights which the Governing Body, on the report of the Committee on Freedom of Association, or the Conference, noting on the report of its Credentials Committee, considers it appropriate to refer to the Commission for investigation. It is also open to any government against which an allegation of infringement of trade union rights is made, to refer such an allegation to the Commission for investigation. ¹

50. With the exception of cases covered by article 26 of the ILO Constitution, which relates to the supervision and application of Conventions ratified by a member State, no complaint can be referred to the Commission without the consent of the government concerned. The consent of a government may be given either in an individual case or, more generally, in advance, for certain categories of cases, or for any case which might arise. If the Governing Body is of the opinion that a complaint should be investigated, it must first seek the consent of the government concerned. If such consent is not forthcoming, the Governing Body has to 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 charges made, together with any comments of the government concerned, and to that government's refusal to co-operate in ascertaining the facts and in any measures of conciliation. ²

51. The question of a government consenting to the ~~refer~~ referral of a case to the Fact-Finding and Conciliation Commission on Freedom of Association need not be considered unless and until the Governing Body itself should decide that the government concerned should be invited to give its consent to the referral of the case to the Commission. Even where a government, in its preliminary observations, indicates that it would not be willing to consent to a reference, such a preliminary reply does not preclude the Governing Body from discussing further whether it is advisable to make a formal request to the government concerned that it should consent to reference of a case to the Fact-Finding Commission.

¹ See First Report of the Committee, paragraph 25.

² Ibid, paragraph 15.

³ Ibid.

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The Fact-Finding and Conciliation Commission
on Freedom of Association.

52. The Fact-Finding and Conciliation Commission on Freedom of Association is appointed by the Governing Body and works in panels of not less than three nor more than five members.¹ Its members are independent persons.

53. The Commission is essentially a fact-finding body, but is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement.²

54. Subject to the provisions prescribed by the Governing Body, the Commission is left to work out its own rules of procedure.³

55. The Commission is to report to the Governing Body on the results of its work, and it is for the Governing Body to consider in the first instance whether further action should be taken on the basis of the report communicated to it.⁴

56. The Commission's reports on cases regarding Members of the United Nations not Members of the ILO will be transmitted to the Economic and Social Council by the Director-General on behalf of the Governing Body.⁵

1 See First Report of the Committee, paragraph 12.

2 Ibid., paragraph 13.

3 Ibid., paragraph 17.

4 Ibid., paragraph 16.

5. Ibid., paragraph 22.