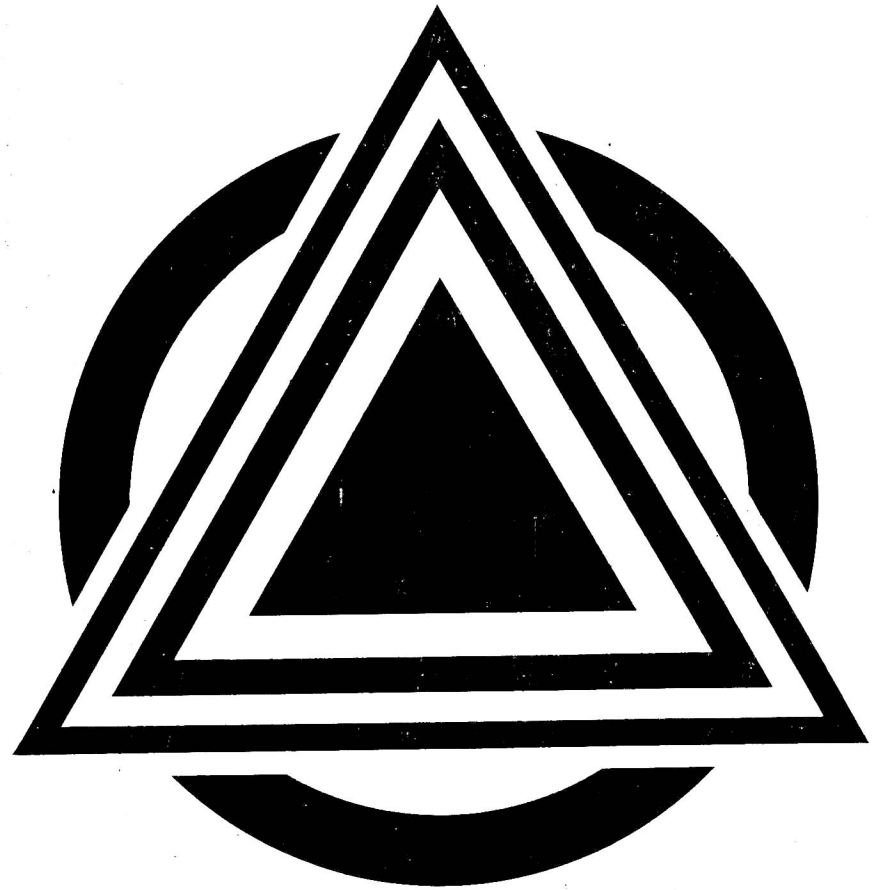
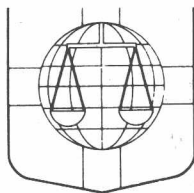


Tripartism and the International Labour Organisation



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Tripartism and the International Labour Organisation

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The first part deals with the question how this tripartite system emanated, and how it moved from the municipal level to become a fact of international life. Thus, the old theorem that "international law is a law between states exclusively" no longer holds good.

The second part outlines the requirements of the ILO Constitution with respect to workers' and employers' participation in the work of the Organisation at all levels, and deals in some detail with the substantive and procedural provisions applicable in cases of non-compliance and doubt concerning such participation, and with the very illuminating cases which have occurred in this context. Attention is also paid to the rules concerning the enforcement of ILO conventions and the safeguarding of the freedom of association.

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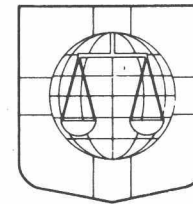
Tripartism and the International Labour Organisation

A Study of the Legal Concept:
Its Origins, Function and
Evolution in the Law of Nations

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Abstract

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Read, in the Name of thy Lord Who Created –
Created Man from a blood-Clot,
Read, thy Lord is the Most Generous One
Who taught by the Pen,
Taught Man What he Knew not.

THE HOLY QUR'AN

*To
My Wife;
Two Daughters and Three Sons
Whose Patience and forbearance
have made this Volume possible*

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Preface

The International Labour Organisation was founded in 1919 to advance the cause of Social Justice and, by so doing, to contribute to ensuring universal and lasting peace. The spirit bequeathed to the organisation by its founding fathers is evident from the opening words of the final paragraph of the preamble to its constitution: "Moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world. . ."

Since the establishment of the ILO there has been a tremendous rise in the level of aspiration of mankind for betterment of human living and working conditions. The establishment of the ILO is itself a fact which demonstrates this increase of hope. Nevertheless, seven decades have now passed and mankind is still far from the achievement of universal justice, harmony and happiness. Although universal justice and harmony will not be achieved overnight, the slow process of experimentation and groping must continue, and man must continue to reject the bad and retain the good.

A unique feature of the ILO's structure is that representatives of workers and employers participate with government representatives in the International Labour conference, the Governing Body of the ILO and in many of its regional and other meetings. This book is the fruit of four years intensive study of the function of tripartism in the ILO, its background and its development. It lights up a field which is not only growing in importance but which is relatively disregarded in most of the developing countries. Needless to say, this contribution is the first of its kind and although written in English, it will be translated into arabic, thereby enriching the arabic library and enhancing the importance of the ILO for arabic readers.

The purpose of the book is not to attack or defend the ILO but to expose its structure and achievements, and to throw light on the position and the role of the representatives of government, employers and workers.

The first three chapters in Part I of this book answer the question: where did the tripartite system come from? They also analyzes how the system has moved from the national level to an entity in international law. Moreover, they follows the evolution of the ILO system as the first international institution in history in which workers, employers, as well as governments have participated, and that has dealt with the problems that are most real to most people of the globe. This tripartite structure makes the ILO unique in the United Nations and is probably the reason behind the strength of the organisation. For example the ILO, with its roots spread beyond the offices of the government to the workers and employers, has

flourished, while the League of Nations, which was restricted to governments, failed in the 1930's because many governments opposed it and the resulting political implications caused it to disappear. Hence, by the unique structure of the ILO the voice in the International Labour Conference is not any more only the voice of the governments. Thus, the old theory that "International law is a law between states only and exclusively" has been ignored. International law has now provided for the representation of non-governmental elements as an essential part of the structure of official international bodies.

Then follows in chapter four a description of the structure of the ILO as it was built up with the all amendments of the constitution up to the 1st November 1974.

In Part 2 of the book, the fifth chapter outlines the requirements of the constitution of the ILO to non-governmental representatives and the procedure which should be followed by the credentials committee and by the conference. The duty of the government of each of the members is to advise the International Labour Office of the nominations made, while it is the duty of the conference to inspect the nominations made, and in particular to decide, in case of protests being made, whether the non-government delegates and advisers have been nominated in accordance with the requirements of the ILO constitution. In other words the credentials of delegates and their advisers shall be subject to scrutiny by the conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or advisor whom it deems not to have been nominated in accordance with the constitution.

This chapter also describes in detail the cases in which matters relating to credentials of employer's and worker's as well as government's representatives to the annual International Labour Conference have been challenged. The relationship of employers' and workers' organisations with the state is one of the fundamental problems of present society, lying at the heart of the ideological conflict which has, so far, split international society asunder. It is not unnatural that these cases have been selected and dealt with in detail as illustrations of attempts to achieve some remedy to the unresolved problems of the relations between trade unions and the government of the developing countries. Chapter five is based primarily on the official documents of the ILO and the other international organisations concerned relating to the various cases described.

Two chapters are devoted to an examination of tripartite structure in two of the most important works of the ILO: the legislative procedure of the organisation in Chapter Six; and the enforcement of the International Labour standards, in Chapter Seven.

Among the United Nations and its specialized agencies, the ILO has achieved a quickening of the legislative process. It has been and remains a pioneer in this area. In fact the most important objective of the ILO is to secure the adoption of the International Labour standards so as to secure for the labouring peoples of the world decent conditions in their lives and work. However, the adoption, strictly speaking, is only a first stage in the whole legislative procedure of the ILO, the in-

tention being that these standards should be embodied in the law of member countries.

When adopted by the tripartite conference, International Labour conventions and recommendations must be submitted to the national authorities competent to act upon them, and through this procedure the submissions of conventions and recommendations to the national authorities is controlled. Secondly, with respect to conventions, if the national authorities give their consent, the member will ratify the convention and will submit annual reports on the measures that they have taken to give effect to the provisions of all conventions to which they are parties. Thirdly, each member state reports at the request of the Governing Body on the position of the law and practice in regard to the matters dealt with in unratified conventions or in recommendations, showing the extent to which effect has been given or is proposed to be given to the provisions of the designated unratified conventions or recommendations. The fourth procedure assures the enforcement of International Labour standards. The constitution of the ILO makes provision for two types of investigations into allegations of non-observance of ratified conventions: "Representations" and "complaints". The development of an International Procedure relating to these matters is clearly an experiment worthy of close attention by both students and lawyers of International Law.

There is also special machinery for examining allegations of violation of trade union rights, to which, up to present time, about 1000 cases of allegations of infringements have been referred in accordance with a procedure agreed between the ILO and the ECOSOC in 1950-51. The Committee on Freedom of Association was set up by the Governing Body of the International Labour Office. Its functions are of a quasi-Judicial nature and usually proceed on documentary evidence supplied both by the complainant and the government concerned. However, in 1971 and 1977 the Governing Body adopted a special "direct contacts" method which the committee may utilize at various stages of its examination because it is a speedier and more informal procedure. This involves the sending of an ILO representative to the country concerned, with a view to seeking a solution to the difficulties encountered, either during the examination of a case or at the stage of the action to be taken on the recommendations of the Governing Body.

As well as the permanent procedures of investigation, conciliation and adjudication, there are other means which may be ordered by the Governing Body, such as special studies and inquiries on an ad hoc basis which concern mainly freedom of association. The special studies, which the ILO have carried out from time to time, either by officials of the organisation or by independent persons, have been of a general nature or in individual countries.

The final chapter of Part 2 attempts to draw certain general conclusions from the descriptive survey of the background and evolution of the tripartism, functionalism, requirements and procedures, International Labour standards and enforcement, contained in part one and two respectively. As well, an attempt to es-

timate the significance of contemporary developments in regard to tripartism for the future of the ILO is made.

The author is aware that the subject is far from treated in a comprehensive manner. Thus, it is hoped that those who crave further knowledge on the subject may well find the extensive bibliography at the end of the book of some use.

It is the author's privilege to express his gratitude to the "Uppsala universitet; Juridiska fakulteten och Juridiska institutionen; and Svenska institutet för Internationell Rätt" for all kinds of assistance and other facilities placed at his disposal during the preparation of the manuscript and the subsequent printing of the book. In fact, the book could not have been written and published without the generous support of the institutions above-named.

For many courtesies he would also like to express his appreciation to the Faculty of Law, University of Stockholm: space, equipment, and facilities made available by the institute have proved to be most important.

During the last two years the author has lived together with a nearly complete collection of the records of proceedings of the International Labour Conference as well as many other official ILO publications. He had the opportunity to visit Geneva in 1980, 1981 and 1982 and discuss the problems of this thesis with many delegates and advisers, especially with the members of the Arab Labour Organisation. None of the officials of the ILO in Geneva, however, bear any responsibility whatever for any of the author's conclusions.

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Cases

A. Permanent Court of International Justice

(In Chronological order: Reference to Permanent Court of International Justice Reports)

- 1922 Nomination of Netherlands Workers delegate to the Third session of the International Labour Conference (B.1)
- 1922 Competence of the ILO in regard to International regulation of the conditions of labour of persons employed in agriculture (B.2 and 3)
- 1923 Competence of the ILO to regulate, incidentally, the personal work of the employer (B.13)
- 1930 The Free City of Danzig and the ILO (B.18)

B. International Court of Justice

(Reference to International Court of Justice Reports)

- 1951 Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide

C. Admission to the ILO and withdrawal from the ILO

(In chronological order: Reference to Record of Proceeding of International Labour Conference)

- 1919 Germany (1st session, p. 276)
- 1919 Austria (1st session, p. 276)
- 1919 Finland (1st session, p. 16)
- 1947 Yugoslavia (30th session)
- 1955 Venezuela (38th session)
- 1966 The Republic of South Africa (48th session, p. 506)
- 1977 The United States of America (63rd session)

D. Representations and Complaints under Articles 24, 25, and 26 of the Constitution of the ILO

(In chronological order)

- 1920 Spanish Trade Union Congress
- 1924 Japanese Seamen's Union
- 1930 Latvian Seamen's Union
- 1935 Madras Railway Workers
- 1936 Salaried Workers International (ITS)

1936	Textile and Dock Workers of French India
1936	Madras Textile Workers
1936	Mauritus Labour Party
1937	Mauritius Labour Society
1937	Estonian Agricultural Workers Union
1938	Chilean Baker's Union
1938	Yugoslav Metalworkers' Union
1961	The Complaint by Ghana against Portugal
1961	The Complaint by Portugal against Liberia
1967	The Association of Federal Servant of the State of Sao Paulo
1970	Italian Employment Service
1971	The Greece Case
1974	The Chile Case
1979	Swedish Dockworkers Union
1979	Non-Observance of the Discrimination Cnvention, 1958 (No. 111) by the Federal Republic of Germany
1980	Non-Obseryance of the Discrimination Convention, 1958 (No. 111) by Czechoslovakia

E. Credential Cases

(in chronological order)

Reference to Record of Proceeding of International Labour Conference

Session of the

Conference Delegate or Adviser Concerned

1	1919	Japanese Worker
2	1920	Finnish Worker
3	1921	Albanian Government
		Romanian Entire Delegation
		Luxemburg Worker
		Latvian Worker
5	1923	Bulgarian Employer
7	1925	Brazilian Worker
9	1926	U.K. Worker
		Indian Employer
10	1927	South African Worker and Adviser
11	1928	Estonian Employer
12	1929	Estonian Employer
14	1930	Portuguese Worker
16	1932	Italian Worker
17	1933	German Worker
19	1935	Austrain Worker

21	1936	(Maritime) Greek Worker
23	1937	Latvian Worker
		Lithuanian Worker
		USSR Worker and Employer
		Bulgarian Worker
27	1945	Argentine Government
		Argentine Worker
		Iranian Worker and Advisers
29	1946	Greek Worker
31	1948	French Worker
33	1950	Indian Worker and Adviser
		South African Worker
		Venezuelan Worker and Adviser
		Bolivian Employer
		Irish Worker
36	1953	Czechoslovakian Employer
37	1954	Venezuelan Worker and Advisers
38	1955	Chilean Worker
		Chinese Entire Delegation
39	1956	Spanish Worker and Advisers
		Chinese Entire Delegation
42	1958	Hungarian Entire Delegation
45	1961	Portuguese Worker
46	1962	Panamanian Worker
		Philippinean Worker
50	1966	Colombian Worker
51	1967	Philippinean Employer and Advisers
52	1968	Greek Worker
53	1969	Greek Worker
		Panamanian Worker
54	1970	Malaysian Employer
		Greek Worker
		Chinese Entire Delegation
57	1972	Ceylonean Worker
		Dahomey Worker
58	1973	Portuguese Worker
59	1974	Burma Employer
60	1975	Mangolan Employer
		Chilean Entire Delegation
61	1976	Srilanka Worker
62	1976	(Maritime) Chlean Entire Delegation
		Iraqi Employer
65	1979	Turkish Worker

67 1981 Malaysian Worker
Bolivian Worker
Guinean Employer
Central African Worker
Chilean Worker
Spanish Worker

F. Governing Body Committee on Freedom of Association
(in chronological order)

Case No. 627 (United States of America)
Case No. 702 (Costa Rica)
Case No. 795 (Liberia)
Case No. 876 (Greece)
Case No. 893 (Canada)
Case No. 908 (Morocco)
Case No. 915 (Spain)
Case No. 916 (Peru)
Case No. 946 (Paraguay)
Case No. 951 (Peru)
Case No. 955 (Bangladesh)
Case No. 983 (Bolivia)

G. The Fact-Finding and Conciliation Commission on Freedom of Association
(in chronological order)

The Peru Case 1950
The Japanese Case 1964–66
The Greek Trade Union Case 1965
The Case of Lesotho 1973–75
The Case of Chile 1974–75
United States/Puerto Rico 1981

H. Ad Hoc Studies and Investigations
(reference to Special Reports)

The Labour and Trade Union situation in Spain 1968–1969
The Situation of Workers of The Occupied Arab Territories
1978–1982

Abbreviations

AF of L	American Federation of Labour
AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
ALO	Arab Labour Organisation
BYIL	British Yearbook of International Law
DR	Report of The Director-General of The International Labour Office to the International Labour Conference
ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECOSOC	Economic and Social Council
FAO	Food and Agricultural Organisation of the United Nations
FO	Foreign Office
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
GB	The Governing Body of the International Labour Office
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organisation
ICCTU	International Confederation of Christian Trade Unions
ICFTU	International Confederation of Free Trade Unions
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
IFTU	International Federation of Trade Unions
ILC	International Labour Conference
ILO	International Labour Organisation
ILR	International Labour Review
ILS	International Labour Standards
IMF	International Monetary Fund
IRO	International Refugee Organisation
ITU	International Telecommunications Union
JDI	Journal du droit International
NGO	Non-Governmental Organisation
NTIR	Nordisk Tidsskrift för International Ret
OB	Official Bulletin

OEEC	Organisation for European Economic Co-Operation
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the League of Nations
OR	Official Records
ONUC	United Nations Operations in the Congo
PCIJ	Permanent Court of International Justice
RCC	Report of the Conference Committee
RCE	Report of the Committee of Experts on the Application of Conventions and Recommendations
RD	Report of the Director to the International Labour Conference
RDI	Revue de Droit International
RP	Record of Proceedings of the International Labour Conference
SO	Standing Orders of International Labour Conference
TUC	Trades Union Congress
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organisation
UPU	Universal Postal Union
UNRRA	United Nations Relief and Rehabilitation Administration
US	United States
USSR	Union of Soviet Socialist Republics
UNTS	United Nations Treaty Series
WFTU	World Federation of Trade Unions
WHO	World Health Organisation
WMO	World Meteorological Organisation

PART ONE

Origins and Evolution