

CHAPTER III.

CHARACTERISTICS OF CONVENTIONS.

Conventions have certain features of their own. They are made up of articles and the contents are arranged in a particular manner. The conventions also influence the pattern of national laws. We shall, in this chapter, deal with the features, the set up and the influence of the conventions on the national laws.

REASONS OF CONVENTIONS.

It may come as a surprise to learn how brief the International Labour Organisation's conventions are when compared with the national laws. There are several possible explanations for this brief presentation of the international standards. As mentioned earlier, International Labour Organisation believes in flexibility of the diversified nature of social, economic and cultural settings of the member states. Flexibility cannot be achieved when the standards are set out elaborately and in a detailed manner, thus leaving no scope for variation. Should the standards be set out briefly, as is done presently, it is clear enough to expand the gist of the international standard pertaining to the specific field of labour while it permits sufficient range of modification. It forms a basis and a guide to the formulation of the national laws.

Another reason for the brevity of the standards is that the aim of the International Labour Organisation as far as the standard setting work is concerned is to achieve international uniformity regarding basic labour rights and privileges. It is felt that as the first step it is sufficient that these rights and privileges (such as freedom of association, maternity protection and weekly rest) be recognised at national levels which is exactly what is done when a convention is ratified. While the fundamental principles are embodied in each of the conventions, member states could work the detailed and practicable plan of action, rules and regulations to give effect to the fundamental rights and privileges. Moreover, it is almost impossible and even unnecessary for the conventions to specify the detailed process of implementing the aims of each of the conventions.

Another point to be noted regarding the ratification of the conventions is that not all the conventions are ratified by the member states. There are two reasons for the non-ratification of the conventions. One reason, to which reference has been made earlier, is the absence of the required favourable situations to ratify the conventions. Member states which have delayed the ratifications on this ground are required by the International Labour Organisation's constitution to review periodically for an improvement in the situation to favour the ratification of these countries. The second reason is where the conventions are irrelevant to the member states. A nation which has practically no

plantation industry need not ratify the Plantation Conventions, nor a land locked country ratify conventions regarding seamen. This is merely a case of irrelevancy.

INFLUENCE OF CONVENTIONS ON NATIONAL LABOUR LAWS.

At present there are over 126 conventions and if one assumes 50 relevant conventions for a particular nation, it is not to be expected that 50 national laws exist in that particular country. This is because more than one convention is often embodied in a single national law. As an illustration, the Rights of Association (Agriculture) Convention 1921, Forced Labour Convention 1930, Underground Work Convention 1935, Right to Organise and Collective Bargaining Convention 1949 are some of the conventions embodied in the Malayan Employment Ordinance 1955. Specific examples of this could be found when we analyse these conventions and the Employment Ordinance 1955 in the next chapter.

At the same time, a single convention's influence can be felt in several Malayan labour laws. Labour Inspection Convention 1947 had been the basis for several labour laws in Malaya such as the Penal Code, Children and Young Persons Ordinance and Wages Councils Ordinance.

SET-UP OF CONVENTIONS.

Let us briefly study the structure or normal pattern of a convention.

Normally the first article of the conventions contain a statement of the convention while the rest of the articles explain the technicalities of ratifications. The Director-General is to be informed of the ratification of the conventions.

" Formal ratification of this convention under the conditions set forth in the constitution of the Organisation shall be communicated to the Director-General of the Organisation for registration " (1)

Another article embodied in every convention would read " The Convention shall come into force at the date on which the ratification of two members of the organisation have been registered by the Director-General. "

" Thereafter the convention shall come into force for any member at the date on which its ratification has been registered with the International Labour Office ". Of course, there is a weakness in the requirement of at least two members submitting their registration of ratification with the Director General before the convention creates obligation on member states to present the convention to their national

(1) This sentence normally appears in each convention.

legislative bodies. If none of the members come forward to be the initial two to ratify a certain convention, the latter would have to remain as "impotent" standards of labour as the member states are not required to submit the convention to their national legislative bodies. Hence conventions of such nature would have to go unheeded by member states. Several such conventions with no nation ratifying them exist today. Reduction of Hours of Work (Public Works) convention 1936 and Migration for Employment Convention 1939 are two examples of conventions which have not been ratified even by a single nation.

Member states may denounce a convention ten years after registration with the Organisation.

Another article of the conventions states that the International Labour Conference would consider each convention after a period of ten years for revision or modification. This provision has not always been adhered to.

In summary then, conventions are stated in brief forms and not all conventions are ratified by member states. As yet the Organisation has not taken any action against any nation failing to ratify any conventions relevant to the nation. Though the member states assure the Organisation to undertake to give effect to the conventions, violation of this assurance have not met with any penalties. Malaya has ratified only nine conventions out of a total of over 126 conventions. Conventions follow a certain pattern in their structure which includes the technicalities of ratification.

We devoted a chapter on the aims and functions of the International Labour Organisation and another (the present one) on the nature of conventions. Armed with this general information, we could look into the conventions (and Recommendations) and Malayan labour laws with more confidence and competence. We shall first take the area of Industrial Relations in the next chapter and analyse international and national standards on the freedom of association and the instruments available for settling of trade disputes.