Earned Social Conscience in Asia: International Industrial Relations Standards in National Legislation*

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There might be something mawkish in speaking of a social conscience when the accepted orthodoxy is that, left to itself, the market-place will find its own solutions. This is a highly mechanistic view of the world, which is part of a dehumanizing process that has exalted the role of technology, at the expense of moral and humane values, at the close of this century. The ILO ought not to feel comfortable within such a framework.

- Blas F. Ople on the ILO's 75th Anniversary[1]

I. INTRODUCTION

When the International Labor Organization (ILO) was awarded the Nobel Peace Prize in 1969, the President of the Nobel Committee emphasized that

1. Former Minister of Labor and Senator and Foreign Affairs Secretary Blas F. Ople, *Notes on the 75th Anniversary of the ILO*, in VISIONS OF THE FUTURE OF SOCIAL JUSTICE: ESSAYS ON THE OCCASION OF THE ILO'S 75TH ANNIVERSARY 229 (1994).

had had a lasting influence on legislation in all countries." An official hoped that "[t]his reputation had to be earned in the future as well."[2] Fifteen years earlier, this same official asserted "legal procedures are still ... unmatched as a means of ensuring – in the long run – the success of international action in the social field."[3]

Indeed, the ILO "ought not to feel" discomfort in the realm of such international action. This "framework of social conscience" finds root in the nine principles of the "Labor Charter" in the Treaty of Versailles,[4] as well as with the emphasis laid down by the Declaration of Philadelphia on the role of economic and social policies in attaining social objectives.[5]

The framework is also built on a solid adherence to a voluntary and deliberate limitation on State sovereignty, based on the conscious realization that the improvement of conditions of labor all over the world would be

2. Nicolas Valticos, *The ILO is 75 Years Old: The Objectives, Structure and Methods of the ILO in Facing the Future, in* VISIONS OF THE FUTURE OF SOCIAL JUSTICE: ESSAYS ON THE OCCASION OF THE ILO'S 75TH ANNIVERSARY 299 (1994).

3. Nicolas Valticos, *The Future Prospects of International Labour Standards*, 118 INT'L LAB. REV. 679, 680 (1979).

4. These nine principles are:
   (a) Labor is not a commodity;
   (b) The right of association should be affirmed;
   (c) Adequate wage should be paid to maintain a reasonable standard of living;
   (d) There should be equal pay for equal work;
   (e) There should be an 8-hour day or 48-hour week;
   (f) There should be a weekly day of rest at least 24 hours;
   (g) Child labor should be abolished;
   (h) There should be equitable treatment of workers in a country; and
   (i) There should be an inspection system to ensure the enforcement of laws and workers protection.

   Eddy Lee, *The Declaration of Philadelphia: Retrospect and Prospect*, 133 INT'L LAB. REV. 467, 468 (1994).

5. "The objectives to be attained by the Declaration are extensive, and include full employment and rising standards of living; the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care; the provision of adequate nutrition, housing and facilities for recreation and culture; the assurance of equality of educational and vocation opportunity; and provision for child welfare and maternity protection." *Id.* at 470-71.

better and more effectively attained by international collective action through an autonomous independent body.[6]

"Improvement of conditions of labor" is brought to the fore by the harmonization of international labor standards, channeled through the adoption of conventions by the annual International Labor Conference and accepted by States for ratification. Non-binding recommendations are adopted containing more detailed standards.[7] To date, there have been 185 Conventions and 194 Recommendations adopted by the 176 member States of the ILO.

In May 1995, a campaign to achieve universal ratification of seven core Conventions was launched by the ILO. An eighth Convention was added in 1999. As identified by the Governing Body, these eight core Conventions are deemed fundamental to the rights of human beings at work, irrespective of the level of development of member States. These rights are in fact a pre-condition for all other rights such that they provide the necessary implements to strive freely for the improvement of individual and collective conditions of work.[8] It is deemed the responsibility of each member-State to ensure that the "necessary implements" for the improvement of individual and collective conditions of work are embedded in their respective national legislation.

The eight core Conventions are as follows:

- Forced Labour Convention, 1930 (No. 29);
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87);
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98);

6. E. OSIEKE, CONSTITUTIONAL LAW AND PRACTICE IN THE INTERNATIONAL LABOUR ORGANIZATION 7 (1985).

7. The basic difference between Conventions and Recommendations is that on one hand, a Convention is designed to be ratified like an international treaty, and a ratifying member State undertakes to discharge certain legal obligations; and there is regular international supervision on the observation of these obligations. A Recommendation, on the other hand, gives rise to no binding obligations but provides guidelines for national policies and action. It is normally used to deal with subjects which are not suitable for the formulation of precise obligations where, for instance, the diversity of national conditions prevents the establishment of rules which can be universally and fully accepted. *Id.* at 145.

8. Explanatory Note Introducing Fundamental ILO Conventions, *available at* http://www.ilo.org (last visited Sep. 1, 2003).

- Equal Remuneration Convention, 1951 (No. 100);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Minimum Age Convention, 1973 (No. 138); and
- Worst Forms of Child Labour Convention, 1999 (No. 182).

The article presents a survey of legislation on industrial relations and dispute settlement involving 11 selected countries in the Asia-Pacific region. It then offers a comparative discussion on these legislation to suggest possible improvements in light of international labor standards. The ultimate objective is to provide an adequate springboard for discussion to address challenges in light of the existing international labor standards framework on industrial relations.

In the pursuit of a focused analysis, this article shall discuss industrial relations and dispute settlement legislation in relation to ILO Conventions and Recommendations on industrial relations. Aside from the two basic international labor standards governing industrial relations,[9] there are a series of other instruments adopted over the years on various aspects of relations between employers and workers, namely: Collective Bargaining Convention, 1981 (No. 154), Recommendation No. 163 listing a number of possible concrete means of promoting collective bargaining; Collective Agreements Recommendation, 1951 (No. 91); and Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). Two other instruments commonly associated with Industrial Relations but already within the sphere of workplace cooperation, namely the Cooperation at the Level of the Undertaking Recommendation, 1952 (No. 94) and Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), have been omitted.

The eleven countries comprising the study are: China, India, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Philippines, Singapore, South Korea, Thailand, and Vietnam. While India is not normally associated with the Asia-Pacific fold, it was included to provide a more comprehensive outlook of industrial relations in Asia.

9. Convention No. 87, Freedom of Association and Protection of the Right to Organize, 1948, 68 U.N.T.S. 17 (1950), *entered into force* Jul. 4, 1950; Convention No. 98, Right to Organize and Collective Bargaining, 1949, 96 U.N.T.S. 257 (1951), *entered into force* Jul. 18, 1951.

II. The International Labor Standards on Industrial Relations

A. *Fundamental Conventions*

1. Convention No. 87

The Convention on Freedom of Association and Protection of the Right to Organize aims to have the right to organize freely exercised by both workers and employers for furthering and defending their interests. Workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing for the purpose of upholding and protecting their respective interests.

These organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise of this right. The organizations shall likewise not be dissolved nor suspended by administrative authority.

Organizations, in turn, have the right to establish and join federations and confederations which shall enjoy the same rights and guarantees. The Convention also provides for the right to affiliate with international organizations.

The acquisition of legal personality by all these organizations shall not be subject to restrictive conditions. And in exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the laws of the land. The laws of the land and the manner in which it is applied, however, shall not impair the guarantees provided for in the Convention.

Of the countries forming part of the study, only the Philippines, Indonesia and Japan have ratified Convention No. 87.

2. Convention No. 98

The Convention on the Right to Organize and Collective Bargaining aims to protect workers who are exercising the right to organize, alongside the goal of non-interference between workers' and employers' organizations and promotion of voluntary collective bargaining.

Workers shall enjoy adequate protection against anti-union discrimination. They shall be protected, more particularly, against refusal to employ them by reason of their trade union membership and against dismissal or any other prejudice by reason of union membership or participation in trade union activities. Workers' and employers' organizations

shall enjoy protection against acts of interference by each other. This protection is extended, in particular, against acts designed to promote the domination, the financing or the control of workers' organizations by employers or employers' organizations.

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined by the Conventions. Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the development of voluntary collective bargaining as a means to regulate terms and conditions of employment.

The countries forming part of the study who have not ratified Convention No. 98 are China, India, South Korea, Vietnam, and Thailand.

B. Other International Industrial Relations Standards

The most recent instrument on the subject of collective bargaining is Convention No. 154, on Collective Bargaining (1981). Its central provision declares that measures adapted to national conditions should be taken with a view to: (a) making collective bargaining possible for all employers and all groups of workers in the branches of activity covered by the Convention; (b) extending collective bargaining progressively to all matters relating to working conditions, terms of employment and relations between employers and workers or their organizations; (c) encouraging the establishment of rules of procedure agreed between employers' and workers' organizations; not hampering collective bargaining by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules; and (d) ensuring that bodies and procedures for the settlement of labor disputes are so conceived as to contribute to the promotion of collective bargaining.

The Convention also specified that the measures taken with a view to promoting collective bargaining should not be conceived or applied as to hamper the freedom of collective bargaining. Where such measures are taken by public authorities they should be the subject of prior consultations and, whenever possible, agreement between public authorities and employers' and workers' organizations.

None of the countries forming part of the survey have ratified Convention No. 154.

Two 1951 Recommendations dealt with collective bargaining and settlement of disputes. The Collective Agreements Recommendation (No. 91) relates to the collective bargaining machinery, the definition of collective agreements, their effects, extension and interpretation and the supervision of

their application. This instrument declares that collective agreements are to be concluded with representative workers' organizations, and in the absence of such organizations, with representatives of the workers duly elected and authorized by them.

The Voluntary Conciliation and Arbitration Recommendation (No. 92), which is intended to promote the establishment of joint conciliation machinery with equal representation of employers and workers, stresses the voluntary nature of both conciliation and arbitration procedure and makes it clear that none of its provisions is to be interpreted as limiting the right to strike.

C. Supervising Implementation of Instruments

In 1926, the International Labor Conference adopted a resolution authorizing the Governing Body to appoint a committee of experts to make a preliminary study of the annual reports submitted by governments relative to compliance with Conventions and Recommendations. The resolution also provided that every future session of the Conference should set up a special committee to consider the annual reports.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) consists of nineteen persons appointed in their personal capacity by the Governing Body, on the proposal of the Director-General. The members are selected from all parts of the world and are normally persons with high qualifications in the legal or social fields. They are appointed for an initial period of three years, with the possibility of extension for further three-year periods.

The main function of the Committee is to examine and evaluate reports submitted by Members of the ILO on ratified and unratified Conventions; the measures taken to bring newly adopted Conventions before the competent authorities for the enactment of legislation, and the action taken by these authorities; as well as to guide governments, where necessary, towards a fuller measure of compliance.[10]

D. Special Procedures on Freedom of Association

Freedom of association has a unique place among the basic human rights and freedoms which concerns the ILO. The Preamble of the ILO Constitution expressly recognized "the principle of freedom of association" and the

10. OSIEKE, *supra* note 6, at 173.

Declaration of Philadelphia reaffirmed that "freedom of expression and association are essential to sustained progress."[11]

A special machinery was set up to deal with the promotion of freedom of association in 1950-51 pursuant to an agreement concluded with the United Nations Economic and Social Council. This machinery provides for intervention by two bodies: the Fact-Finding and Conciliation Commission on Freedom of Association and the Freedom of Association Committee of the Governing Body.[12]

III. Survey of National Legislation

A. Republic of Korea[13]

1. Nature and Purpose

Collective bargaining and fair adjustment are the centerpiece of the Korean industrial relations system. The purpose of the Trade Union and Labor Relations Adjustment Law reads:

> To maintain and improve the working conditions and to improve the economic and social status of workers by securing the workers' right of association, collective bargaining and collective action, and to contribute to the maintenance of industrial peace and to the development of the national economy by preventing and resolving industrial dispute through fair adjustment of labor relations.

2. Trade Unions

Union registration is undertaken upon issuance of a certificate by the Minister of Labor, who may order correction of the union constitution and by-laws in line with resolution of the Labor Relations Commission. Unfair labor practices, or prohibited acts that undermine the right to organize, are enumerated. Dissolution may be caused by the Minister with a resolution of the Labor Relations Commission, when the trade union has no officials and has not carried out any activity for more than one year.

3. Collective Agreements

Collective agreements are executed between a trade union with authority to bargain and an employer or employers' association. Parties are required to

11. *Id.* at 177.

12. E.S.C. Res. 277 (X), U.N. ESCOR, 10TH Sess. (1950).

13. Trade Union and Labor Relations Adjustment Act, Law No. 5310, Mar. 13, 1997; Labor Relations Commission Act, Law No. 5311, Mar. 13, 1997.

bargain in good faith and sincerity, with no delays. The parties shall report the conclusion of an agreement to the Minister within 15 days from date of conclusion. The Minister, in turn, may order an amendment of the agreement in matters determined to be unlawful.

The term of the agreement shall not exceed two years. If there is no new agreement reached by the expiry date although negotiations subsist, the existing agreement shall remain effective for three months after expiry date. The agreement may be terminated by giving three months' advance notice to the other party. Any disagreement on the interpretation of the agreement shall be referred to the Labor Relations Commission, which shall render a clear opinion on the request within 30 days. Opinions of the Commission shall have the same effect as that of an arbitration award.

4. Binding Force of Collective Agreements

Where the agreement applies to more than one-half of workers of the same kind of job employed under ordinary circumstances in a business or workplace, the agreement shall apply to other workers of the same kind of job employed in the same business or workplace.

Where more than two-thirds of the workers of the same kind of job employed in an area are covered by the application of the agreement, the Minister may, with the resolution of the Labor Relations Commission, make a decision that such a collective agreement shall apply to other workers of the same kind of job and their respective employers engaged in the same area.

5. Industrial Action

Industrial actions are undertakings that obstruct the normal operation of a business, such as strikes, sabotage, lock-outs, or other activities through which the parties to labor relations intend to achieve their claims. Industrial actions shall not be conducted in ways that obstruct or interrupt entry to premises, work and other normal services of individuals not related to the dispute and violence or threat. The Minister, with a resolution from the Labor Relations Commission, shall order to suspend industrial actions that stop, close or interrupt normal maintenance and operation of security facilities of a workplace. If there is no time to wait for the resolution, the Minister may order suspension immediately, in which case *ex post facto* approval of the Commission is necessary.

During industrial action, acts to prevent operation equipment from being damaged or to prevent raw materials or manufactured goods from being impaired or deteriorated shall be enforced. A majority of union members must have voted to take action by a direct, secret, and unsigned

ballot. Major defense corporations or those engaged in production or supply of defense goods, such as electricity and water are prohibited from taking industrial action. Industrial action shall not be taken without completing adjustment procedures, unless mediation or the issuance of an arbitration award was not made within the prescribed periods. Employers may not hire, contract or subcontract during the period of industrial action.

6. Adjustment of Industrial Disputes

a. General Principles

Dispute settlement mechanisms shall ensure efforts towards voluntary adjustment. Procedures for labor-management consultation shall be stipulated in a collective agreement. Private mediation and arbitration are encouraged.

b. Mediation

Mechanisms for public mediation are provided. Mediation proceedings commence upon request to the Labor Relations Commission and should be undertaken in good faith. A mediation committee shall be established within the Commission, members of which are nominated by the Chairman. The Committee shall be composed of three members, representing the workers, employers and public interest. In the alternative, a single mediator nominated by the Chairman may be authorized by the Commission.

Public mediation in general business shall be completed within 10 days, and within 15 days in public services, subject to extension by agreement of the parties. Persons not related to the dispute may be prohibited from attending the proceedings. A mediation proposal, which may be published, shall be prepared for acceptance by the parties. The refusal to accept the proposal may result in termination of procedures for mediation.

Any question on the interpretation of the mediation proposal may be brought before the committee or single mediator, who shall put forward clear views on the matter within seven days. No industrial action with regard to interpretation or implementation of such a proposal shall be undertaken, until such views have been presented. If the parties accept the proposal, all members of the committee or the single mediator shall prepare a mediated agreement in writing and shall sign and seal it. A mediated agreement amounts to a collective agreement.

c. Arbitration

The arbitration arm is lodged with a tripartite Labor Relations Commission, composed of the Central Labor Relations Commission (CLRC), Regional

Labor Relations Commission (RLRC), and the Special Labor Relations Commission (SLRC).

The CLRC, under the Minister of Labor, shall review measures by the RLRC and SLRC, adjustment of industrial disputes under the jurisdiction of two or more RLRCs, and such cases under its jurisdiction as determined by other enactments. The RLRC, also under the Minister of Labor, has jurisdiction over cases occurring in its region. The SLRC, attached to the Central Administrative Authority, has jurisdiction over cases concerning specified matters as determined by relevant enactments.

A case before the Commission shall be commenced by request of both parties or by one party in accordance with the provisions of a collective agreement. There shall be no industrial action for fifteen days from referral of the case to arbitration.

An arbitration committee shall be established composing of three members nominated by the chairman from those chosen by agreement of the parties among members representing public interests. Members from workers or employers may attend to present opinions, with the consent of the committee. The committee chairman may prohibit attendance of persons not related to the dispute. The arbitration award shall be in writing. Any issue on the interpretation of the award shall be addressed by the committee.

From an arbitration award by the RLRC or SLRC, an application for review by the CLRC may be made within 10 days from receipt. From an arbitration award by CLRC, an application for administrative suit may be made within fifteen days from date of receipt of award. Where no request for review or administrative suit was filed, the arbitration award or decision on review shall be final.

d. Special Provisions for Adjustment of Labor Disputes in Public Services

Public services pertains to services that are indispensable to the daily lives of the general public or has great influence on the economy, namely: regular line public transportation services, water, electricity, gas supply, oil refinery and supply services, public health and medical services, banking services and the mint, and broadcasting and telecommunication services.

A tripartite special mediation committee composed of members nominated by the Commission chairman shall be formed to recommend a decision for arbitration. The chairman shall decide whether the case shall be referred to arbitration.

e. Emergency Adjustment

The Minister may decide to conduct emergency adjustment in disputes involving public services and cases where the danger of impairing national

economy or lives of the general public exists because of the vast extent and specific character of the dispute. The Minister shall publish the decision for emergency adjustment, and no industrial action shall resume until 30 days from publication.

The CLRC shall commence mediation, and the chairman shall determine if the dispute is to be referred to arbitration.

f. Unfair Labor Practices

A worker may apply for a remedy with the Labor Relations Commission within three months from commission of an unfair labor practice.

The Commission shall conduct the necessary investigation without delay, under procedures specified by the CLRC. The Commission shall issue an order if there is a finding by the Commission of an unfair labor practice. From a finding of the RLRC or SLRC, an application for review must be filed with the CLRC within 10 days. From the CLRC, an administrative suit may be filed in accordance with the Administrative Litigation Act within 15 days.

If there is no timely application for review or administrative suit, decisions of dismissal or review shall be final.

B. Lao People's Democratic Republic[14]

1. Nature and Purpose

The Industrial Relations System is based upon adherence to the right to organize and negotiate with the employer on matters relating to employment. The purpose of the system is to regulate employment relationships, make best use of workers' abilities to ensure national social and economic development and enhance the efficiency and productivity of society and improve workers' living conditions.

Principles of mutual benefit to employers and workers uphold the following: (a) Government shall ensure that employers and workers derive mutual benefits from their relationships without discrimination on the basis of race, color, sex, religion, political opinion or social status; (b) Workers shall respect and observe work rules and comply with all labor regulations; and (c) Employers shall provide workers with fair wages, safe working conditions, and social protection.

14. Decree No. 24/PR of the President of the Republic, Apr. 21, 1994; Act No. 002/NA of Mar. 14, 1994 Concerning Labour.

2. Trade Unions

Workers have the right to organize and belong to any lawful mass and social organization. If no trade union is established, workers' representation shall be established.

Trade unions shall be responsible for the promotion of the following: (a) solidarity, training and mobilization of workers with regard to labor discipline; (b) work performance according to production plans established by the labor unit; (c) presentation of any claims regarding compliance with labor regulations and contracts of employment by the employer; (d) participation in the settlement of labor disputes; and (e) negotiations with the employer on matters relating to salaries, hours of work, rest periods, working conditions, and the social security system provided by laws and regulations.

The employer shall provide trade unions or workers' representatives with facilities and appropriate premises and provide them free time for at least one hour per month during working hours to enable them to carry out their activities.

There is an outright prohibition of forced labor.

3. Settlement of Disputes

Industrial disputes are divided into two types: (a) disputes concerning implementation of provisions of labor law, labor regulations, employment contracts, labor unit work rules and other regulations, called "disputes over rights"; and (b) disputes related to claims against the employer for new benefits or rights, which are called "disputes over interests".

a. Rights Disputes

Rights disputes shall initially be resolved by the parties. If no agreement is reached fifteen days after submission of claim to the employer, a worker may submit the dispute to the labor administration for conciliation.

Where the labor administration fails to resolve or resolves only a part of the dispute within 15 days, the case shall be submitted to the People's Court for consideration and decision.

b. Interests Disputes

The procedure in rights disputes shall apply. If the labor administration fails to settle the dispute within ten days, such dispute shall be submitted to the Labor Dispute Arbitration Committee. The Committee shall be composed of representatives from labor administration, trade unions, employers and other concerned parties.

c. Prohibition of Work Stoppage

There shall be no work stoppage in disputes concerning the following: (i) implementation of labor law and regulations, contracts of employment and labor unit work rules; (ii) where both parties have agreed to negotiate for a settlement; (iii) during the process of settlement of unresolved matters between workers and employers before the Labor Dispute Arbitration Committee; and (iv) during a labor dispute settlement procedure before the People's Court.

C. *Vietnam*[15]

1. Nature and Purpose

The Vietnamese industrial relations system adheres to collective bargaining with mandatory recognition and conciliation and arbitration in dispute settlement.

2. Trade Unions

A Federation of Labor at the provincial level shall set up provisional trade union organizations in every enterprise not later than six months from the day the Labour Code takes effect, or not later than six months from commencement of operations in case of newly-established enterprises.

The scope of activity of a provisional trade organization shall be determined by the government in conjunction with the Vietnam General Confederation of Labor.

When a union is established in the enterprise in accordance with Trade Unions Law and Trade Unions Regulations, the employer must recognize such a union. The employer shall not discriminate based on union membership and shall provide the trade union with necessary working facilities.

Part-time cadres shall be given some free time during hours of work to conduct union activities and shall be paid normal wages. Full-time cadres shall be paid from trade union funds and entitled to all rights, benefits, and collective welfare enjoyed by other workers of the enterprise.

The Vietnam Confederation of Labour and trade unions, together with competent authorities and representatives of employers, shall take part in discussing and resolving labor relations questions, and may establish the following: (a) employment service agencies; (b) vocational training

15. Labour Code of the Socialist Republic of Vietnam, Jun. 23, 1994, *implemented* Jan. 1, 1995.

establishments; (c) mutual aid funds; (d) legal consultancy offices; and (e) other welfare services for workers.

3. Collective Agreements

A collective labor agreement is a written undertaking concluded between a collective body of workers and their employer concerning conditions of work and rights and interests of each party to the employment relationship. An agreement shall be in accordance with principles of voluntariness, equality and openness to the public.

A procedure for collective bargaining negotiations has been outlined in the law. The agreement may be concluded if the contents are approved by more than 50% of workers of the labor collective in the enterprise.

Mandatory subjects of bargaining are commitments in respect of employment and guarantee of employment, hours of work and rest, wages, bonuses and allowances, number of employees, work rules, occupational safety and health, and social security for workers.

The agreement takes effect from the date of registration with the provincial labor office. The provincial labor office is competent to declare null and void a collective agreement that contravenes the law, or if the agreement is not signed or registered, or the proper procedure for its conclusion was not observed. The parties may be given time to conform, but with continued failure to comply, the provincial labor office shall nullify the agreement.

Where a party to the agreement has failed to fully implement or has breached its provisions, the aggrieved party may demand full compliance. Both parties must jointly examine and settle the matter, and if no settlement is reached each party shall have the right to apply for settlement.

The agreement may be concluded for a period of one to three years. If concluded for the first time, the period may be less than one year. Amendments may be undertaken three months after implementation (if period less than 1 year), or after six months of implementation (if period runs from one to three years).

Extensions are allowed prior to the expiration of the agreement. If no agreement is reached within 3 months after expiration, the agreement ceases to have effect.

In case of division or transfer of ownership or right to use company assets, the new employer shall be responsible for the continued implementation of the agreement until expiry or the conclusion of the new agreement. In case of merger, the implementation of the agreement shall be determined by the government.

Expenses in bargaining, signing, registering, amending, or publishing the agreement shall be shouldered by the employer. Union representatives are entitled to payment of wages during participation in negotiation and signing of the collective agreement.

4. Labor Disputes Settlement

a. Basic Principles

Disputes shall be settled initially through direct negotiation and arrangement by two parties at the place where the dispute arises.

Conciliation and arbitration shall be concluded on the basis of mutual respect of rights and interests, respect of the general interest of society and compliance with the law.

Examination and settlement of disputes shall be accomplished publicly, objectively, promptly, rapidly, and in conformity with law.

Dispute settlement shall ensure participation of representatives of trade unions and employers.

When a dispute is under examination by the Conciliation or Arbitration Council, neither party shall be allowed to take unilateral action.

b. Types of Disputes

Disputes involve the following: (1) rights and interests relating to employment, wages, earnings, and other conditions of work and to the implementation of employment contracts and collective agreements; (2) issues arising from vocational training or apprenticeship; (3) between individual workers and the employer; and (4) between the workers' collective and the employer.

c. Rights and Obligations of Parties in Proceedings

The parties are entitled to the following: (1) participate either directly or through their representatives; (2) withdraw from or modify the substance of the dispute; and (3) ask for replacement of person directly in charge of settlement proceedings when they have legitimate grounds to consider that that person cannot guarantee objectivity and fairness.

The parties shall undertake the following: (1) provide all relevant documents and evidence upon request of the labor dispute settlement bodies; and (2) strictly implement the agreement reached, the conciliation record, the decision or award of dispute settlement bodies, or the sentence of the People's Court.

d. Settlement of Individual Labor Disputes

Disputes involving individuals and employers shall be examined and settled by the Labor Conciliation Council or the labor conciliator of the labor district office where there is no Council or People's Court.

The Labor Conciliation Council exists in enterprises employing ten or more workers. It comprises an equal number of worker and employer representatives, as agreed upon by the parties. Council members shall serve for two years. The chairman and secretary shall be appointed by rotation among representatives of each party.

Within seven days from receipt of the application, the Council shall set forth a conciliatory proposal for consideration. If the proposal is accepted, a conciliation record shall be drawn. If conciliation fails, there shall be a record of non-conciliation, which shall be sent to the parties within three days from declaration. Each party shall have the right to apply with the district People's Court for settlement of the dispute.

The procedure observed by conciliators of labor offices is similar to the process before the Council.

If conciliation has failed, an application may be filed with the district People's Court. Without undergoing conciliation, the following disputes may be submitted at the district level: (1) disputes concerning labor, disciplinary measures consisting of dismissal or unilateral termination of an employment contract; and (2) disputes concerning material liability of workers to compensate for damages.

Workers are exempted from court expenses in proceedings involving claims for wages, social security rights and benefits, compensation for injury due to occupational accident or disease, and compensation for damages, for illegal dismissal or for illegal termination of an employment contract.

e. Settlement of Collective Disputes

The conciliation procedure before the Labor Conciliation Council (LAC) or Labor Conciliator in the settlement of individual disputes is applicable to collective disputes.

If conciliation fails, the parties may proceed to arbitration through the Labor Arbitration Council at the provincial level. The LAC consists of full-time and part-time members who are representatives of the labor office, trade union, employers and authoritative lawyers, administrators, and social workers.

The LAC shall be chaired by a representative from the provincial labor office. Members shall serve for three years, and shall decide by a majority

through secret ballot. The provincial labor office shall provide facilities for the use of the LAC.

Within ten days from receipt of the application for arbitration, the parties shall again pursue the possibility of reaching conciliation and settlement. Meetings of the LAC shall be held in the presence of authorized representatives of the parties. Where necessary, representatives of trade unions of higher level and competent authorities shall be invited.

The LAC shall set forth conciliatory proposals, but if conciliation fails it shall issue its award in the settlement of the dispute and immediately notify the parties. Where there is an objection to the award by the collective, there shall be a right to request review before the People's Court or an option to stage a strike. Where there is an objection to the award by the employer, there shall be a right to request review before the People's Court. This right to request review by the employer has no impending effect on the collective's right to strike.

f. Strikes

A decision to strike declared by the Executive Committee of the trade union shall materialize after obtaining approval in a secret ballot or through collection of signatures of a majority of workers in the collective.

The union executive committee must send a maximum of three representatives to present written demands of the labor collective to the employer and send a notice to the provincial labor office and federation of labor at the same level. Demands and notices must indicate the issues of disagreement, the proposed solutions, results of the secret ballot or collection of signatures approving the decision to strike, and the starting time of the strike.

All acts of violence, damage to machinery, equipment and property of the enterprise, and acts in contravention of public order and safety during a strike shall be strictly prohibited.

Strikes are prohibited at certain enterprises of public service and enterprises essential to the national economy or national security and defense. When a strike may cause serious threat to the national economy or public safety, the Prime Minister shall have the power to issue a decision to suspend or stop the strike.

A strike is considered illegal when: (1) it does not arise from a collective labor dispute; (2) it goes beyond the scope of labor relations; (3) extends beyond the scope of the enterprise; or (4) breaches procedure in undertaking a strike. The People's Court shall render decisions on the legality of a strike.

D. Japan[16]

1. Nature and Purpose

The Japanese model upholds autonomous self-organization and encourages collective bargaining. Dispute settlement is anchored on promotion of fair adjustment of labor relations and prevention and settlement of disputes, thereby contributing to the maintenance of industrial peace and economic development.

2. Trade Unions

A trade union that complies with the requirements for registration submitted to the Labor Relations Commission may participate in the procedures provided in the law. The LRC shall issue a certification to this effect.

Representatives of a trade union or those to whom the authority has been delegated by the trade union shall have authority to negotiate with the employer or the employers' organization on behalf of the trade union or the members of the trade union with respect to the conclusion of a collective agreement and other matters.

Unfair labor practices pertaining to the right to join or organize a trade union are enumerated.

There are provisions on the dissolution of a trade union.

3. Collective Agreements

Agreements shall generally be for a term of three years, unless no term is stated in the agreement, in which case termination may be undertaken by written notice to the other party.

The Labor Relations Commission may amend inappropriate portions of the agreement.

4. Binding Force of Agreements

When three-fourths of workers come under application of the agreement, the same apply to the remaining workers. When majority of workers of the same kind come under application of the agreement, the Minister or prefectural governor may, upon request, decide that the collective agreement

16. Trade Union Law, Law No. 174 (Jun. 1, 1949), *amended by* Law No. 89 (Nov. 12, 1993); Labor Relations Adjustment Law, Law No. 25 (Sept. 27, 1946), *amended by* Law No. 82 (Jun. 14, 1988).

concerned should apply to remaining workers of the same kind in the same locality and their employers.

5. Dispute Settlement

A labor dispute means a disagreement over claims regarding labor relations arising between the parties concerned with labor relations, resulting in either the occurrence of acts of dispute or the danger of such occurrence.

An act of dispute refers to a strike, slowdown, lockout, act or counteract hampering the normal course of work, performed by the parties concerned with labor relations with the object of attaining their respective claims.

a. Responsibilities

The parties shall make efforts to promote proper and fair labor relations, to fix by collective agreement matters concerning the establishment and operation of regularized organs to promote the constant adjustment of labor relations, and to settle them independently in good faith.

Government shall assist parties in achieving an independent settlement of differences, to promote utmost occurrence of acts of dispute.

b. Labor Relations Commission

The LRC is a tripartite body consisting of the Central Labor Relations Commission. Central Labor Relations Commission for Seafarers, Prefectural Labor Relations Commissions and Local Labor Relations Commission for Seafarers.

LRCs shall have the authority to undertake the following: (1) trade union certification; (2) general binding power of collective agreements; (3) unfair labor practices; and (4) conciliation, mediation, arbitration of labor disputes. Only public members shall participate in the disposition of cases involving trade union certification and unfair labor practices and cases under the Labor Relations Adjustment Law, though the employer and labor members may participate in hearings.

Public members of the LRC should not be an officer of a political party nor should such member receive remuneration from any other job.

The CLRC, in addition to the above-stated functions, shall undertake the following:

1. promulgate rules of procedure for itself and the Local Labor Relations Commission;
2. handle cases concerning labor relations of national enterprises;

3. handle cases which span two or more prefectures;
4. handle cases which present issues of national importance; and
5. review dispositions of the LLRC, with full authority to reverse, accept, or modify such dispositions, or it may reject an appeal for review.

The CLRC shall be under the jurisdiction of the Minister of Labor, and shall be composed of 13 representatives from the employer, worker, and public interest sectors. The term of office of each member shall be two years. The Chairman shall be elected from the public members and shall preside over the business of the CLRC.

The Local Labor Relations Commission shall be established by prefectures, composed of 5 to 13 members from each sector.

c. Special Members for Adjustment

Special Members of Adjustment may be established in the CLRC by the Minister of Labor, and in the LLRC by the prefectural governor. They shall participate in mediation or arbitration of labor disputes carried out by the LRCs. The composition of the Special Members of Adjustment shall be tripartite in nature, and the members may receive compensation or expenses.

d. Conciliation

The LRC shall appoint a panel of conciliators and prepare a list thereof. Conciliators shall be persons of knowledge and experience who are capable of rendering assistance for the settlement of labor disputes.

Conciliation commences upon request of one or both parties to a dispute.

Where there is no prospect of effecting a settlement, the conciliator shall withdraw and report the salient facts of the case to the LRC.

e. Mediation

The LRC shall carry out mediation in the following cases: (1) disputes concerning public welfare undertakings with request for mediation or initiative of the LRC or the Minister; or (2) disputes of a large scope or involving work of a special nature and seriously affecting public welfare.

Mediation shall be carried out by a committee represented by employers, workers, or persons representing the public interest, with the Chairman coming from the latter. The committee shall fix a date, require the presence of the parties concerned and request them to present their views. It shall also

have the power to exclude any person other than parties and relevant witnesses.

The Committee shall draft a proposal for settlement, which may be published. If the parties accept and disagreement arises over interpretation and implementation, the committee shall be requested to provide its views. During the period of the request, no party shall resort to acts of dispute within fifteen days from the date of such a request.

There shall be preferential treatment of cases involving public welfare undertakings.

f. Arbitration

The LRC shall carry out arbitration in any of the following cases: (1) when a request for arbitration has been made to the LRC by both parties to the dispute; and (2) when a request for arbitration has been made to the LRC by either one or both of the parties in accordance with a provision in the collective agreement requiring that an application for arbitration by the LRC be made.

There shall be an arbitration committee of three members, nominated by the LRC chairman, from members of the LRC or Special Members for Adjustment representing the public interest selected by agreement of the parties; where no such agreement is reached, the Chairman shall nominate, after asking opinions of parties concerned, from among public members of the LRC or the Special Members for Adjustment. The Chairman of the committee shall be elected from among the members by mutual vote.

The committee shall decide by a majority. It has the power to exclude persons other than the parties and relevant witnesses.

The arbitration award shall be in writing, specifying the date when the award goes into effect.

g. Emergency Adjustment

The Prime Minister may decide on emergency adjustment when a case involves a public welfare undertaking or is of large scope or related to work of special nature, and when suspension arising from an act of dispute would gravely imperil normal operation of the national economy or daily lives of people. Such a threat must actually exist.

The Prime Minister shall ask the opinion in advance of the CLRC, and shall publish the decision together with a statement of reasons, with notification to the CLRC and parties concerned.

The CLRC shall exert utmost efforts to settle the dispute, and may undertake conciliation, mediation or arbitration. Cases of emergency adjustment shall take precedence over all other cases.

E. Malaysia[17]

1. Nature and Purpose

The Malaysian system also adheres to collective bargaining and an elaborate procedure in dispute settlement.

2. Trade Unions

Workmen have the right to join trade unions. Unfair labor practices that interfere with the right to organize are enumerated. Union members are granted leave on trade union business.

The above-stated basic trade rights cannot be violated. Any violation of such rights may be lodged with the Director-General for Industrial Relations. When the Director-General could not resolve the complaint, the matter is referred to the Minister of Labor who, in turn, may refer the matter to the Industrial Court for hearing. This entire procedure is not time-bound.

There is a prohibition on managerial, executive, confidential or security employees joining trade unions. Any dispute as to the managerial, executive, confidential, or security status of an employee shall be referred to the Director-General.

A claim for union recognition in a prescribed form may be served by the trade union on employers. Within 21 days from the application, the employer may recognize or deny recognition, or apply to the Director-General to ascertain whether workmen are union members.

The Director-General shall take steps to resolve the matter, which may be referred to the Director-General for Trade Unions for a decision on the competence of the trade union to represent the workers. If the matter is not resolved, it shall be referred to the Minister, who decides whether recognition shall be given.

There shall be a three-year bar from the date of recognition, and a six-month bar from the date of non-recognition.

3. Collective Bargaining

17. Industrial Relations Act, Act 177 (1967).

There are prohibited subjects of bargaining, namely matters on promotion, transfer, appointment, termination, dismissal, assignment or allocation of tasks (though procedure in promotions may be included).

The employer has fourteen days to reply to a written invitation to bargain. Upon acceptance, the parties have 30 days to commence bargaining. If collective bargaining is refused within the fourteen-day period or there is no such bargaining within the 30-day period, the Director-General for Industrial Relations shall be notified.

If there is still no bargaining despite the Director-General's intervention, a trade dispute shall be deemed to exist.

Should there be a refusal to include an allowed subject of bargaining, representations in writing shall be made to the Minister, whose decision on the matter shall be final and conclusive.

The collective agreement shall be in writing, signed by the parties, and effective for three years.

For new undertakings, pioneer enterprises or any industry named by the Minister, agreement provisions shall be limited to those contained in Part XII of the Employment Act of 1955, unless approved by the Minister. This privilege shall apply for 5 years from the date such industries commence, unless the Minister extends the period.

The collective agreement shall be deposited with the Registrar, who shall bring it to the notice of the Industrial Court for its cognizance. A collective agreement taken cognizance shall be deemed an award, and therefore binding on parties and successors. The Court may refuse cognizance or ask provision/s to be amended.

4. Conciliation

A trade dispute may be reported to the Director-General by a party. The Director-General shall take steps to promote settlement, and may refer the matter to an existing machinery. The Minister may also conciliate a trade dispute.

There shall be no advocates, advisers, or consultants representing the parties in the conciliation proceedings.

A trade dispute refers to any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen.

5. Representations in Dismissals

In cases of dismissal without just cause or excuse, a party may make representations within 60 days from dismissal to the Director-General for Industrial Relations for reinstatement. The Director-General shall attempt expeditious settlement. If no settlement is reached, the Minister shall be notified.

The Minister may refer the matter to the Industrial Court for an award. The award by the Court shall be a bar to any action for damages in respect of wrongful dismissal.

In proceedings before the Director-General, the parties shall not be represented by advocates, advisers, or consultants.

6. Industrial Court

The President of the Industrial Court shall be appointed by the King, with a panel of persons representing employers and workmen appointed by the Minister. The Court may sit in two or more divisions with the same or different chairman. The King may appoint any person to be the chairman of a division.

Where a trade dispute exists or is apprehended, the Minister may refer the dispute to the Court upon joint request, in writing, by the trade union and the employer. In conciliation, the Minister may refer the trade dispute to the Court. If the trade dispute pertains to the government or any state authority, reference shall be made with consent of the King or state authority.

The need for exhaustion of remedies in a particular industry shall be observed.

The Court has the power to: (1) join, substitute, or strike off parties; (2) summon parties to proceedings; (3) take evidence on oath or affirmation; (4) hear and determine matter before it; (5) conduct proceedings in private; (6) with consultation of the Minister, call experts; and (6) do all things expedient or necessary.

The Court shall make an award within 30 days from reference, and with regard to public interest, financial implications, effect on economy and industry, and probable effect in related or similar industries. It may also take into consideration any agreement or code relating to the employment practices between organizations, where such an agreement has been approved by the Minister.

The Court shall not be limited to specific relief claimed by parties or to demands made by the parties.

Parties may be represented by advocates with the permission of the President or Chairman.

The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

In issues pertaining to the interpretation of various awards and agreements, the Minister may refer the question to the Court, which can vary the terms of an award.

7. High Court

Reference to the High Court may be made on a question of law, within 30 days from the date of an award. Once an application for review is granted, compliance with the award shall be stayed.

The High Court may confirm, vary, substitute or quash the award. Its decision shall be final and conclusive.

8. Investigation and Inquiry

Without prejudice to conciliation and the power of the Industrial Court, the Minister may appoint a committee of investigation or board and refer any matter connected with or relevant to the dispute. The committee shall be composed of one or more persons appointed by the Minister. The board shall consist of a chair or such other persons as the Minister thinks fit.

The committee or board shall investigate causes and circumstances of any trade dispute or matter referred to it. There shall be a report to the Minister, who may publish any information obtained or conclusions arrived at by the Board, except for privileged information.

9. Strikes and Lockouts

Pupils shall not take part in trade disputes. Violators face the possibility of expulsion.

There is a list of prohibited acts during a strike, alongside a host of other restrictions on strikes and lockouts in essential services, namely:

i. cooling-off periods;

ii. during the pendency of proceedings before the board of inquiry and seven days after conclusion of such proceedings;

iii. after trade disputes referred to the Court;

iv. in government service, if the King or state authority has withheld consent to a reference to the Court;

v. with respect to matters covered by a collective agreement taken cognizance by the Court; and

vi. with respect to prohibited subjects of bargaining.

F. Philippines[18]

1. Nature and Purpose

The Philippine industrial relations system is founded upon collective bargaining and voluntary and compulsory modes of arbitration in dispute settlement.

2. Trade Unions

Unions acquire legal personality through the fulfillment of registration requirements prescribed by law and regulations. Unfair labor practices that curtail the right to self-organization constitute an administrative and criminal offense.

Legitimate unions attain sole and exclusive bargaining agent status either through voluntary recognition, if there is only one union in an appropriate bargaining unit, or through a certification election administered by the Department of Labor and Employment.

Once certified as a bargaining agent, an employer is mandated to collectively bargain. A union serves as a sole and exclusive bargaining agent for a period of five years.

3. Collective Bargaining

There is a procedure for collective bargaining outlined under the law. A collective bargaining agreement is effective for not more than three years. Registration is a requirement to bar any representation challenge for five years from date of execution of the agreement.

Parties shall meet promptly and expeditiously and are enjoined to bargain in good faith.

4. Dispute Settlement

There are various entry points in terms of arbitration of labor cases.

18. A Decree Instituting A Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [Labor Code], Presidential Decree 442, as amended (1974).

For issues on registration of unions and collective bargaining agreement, as well as internal union disputes, the focal agency is the Bureau of Labor Relations through the filing of the appropriate complaint.

For interpretation and implementation of a collective bargaining agreement, the parties shall resort to a grievance machinery and voluntary arbitration.

For termination disputes, unfair labor practices, money claims, legality of strikes, or damages, the National Labor Relations Commission has original and exclusive jurisdiction.

With the advent of the Labor Code in 1974, voluntary arbitration has become the preferred mode of settling disputes, though resort to this mechanism has been scarce.

Appeals from decisions of quasi-judicial agencies shall be lodged with the Court of Appeals, whose decisions, in turn, may be reviewed by the Supreme Court.

G. China[19]

1. Nature and Purpose

The Chinese system has a distinct trade union and labor contract framework, and adheres to conciliation, mediation, and arbitration as forms of dispute resolution.

Settlement of labor disputes follows the principle of legality, fairness and promptness to safeguard the legitimate rights and interests of the parties involved.

2. Trade Unions

a. Forms

The Trade Union Law does not enumerate the requirements for acquisition of legal personality on the part of trade unions. It declares that the All-China Federation of Trade Unions, regional trade union federations and industrial trade unions have the legal personality of a social body. Grassroots trade union organizations that meet the conditions as specified in general civil law may also acquire legal personality.

19. Trade Union Law, *promulgated* Apr. 3, 1992; Labour Act, *promulgated* Jul. 5, 1994, as amended.

Institutions that have 25 or more members may set up a grassroots trade union committee. Trade unions with less than 25 members elect an individual to organize activities among the members.

Regional trade union federations at various levels may be established by the localities at and above the country level.

National or regional industrial trade unions may also be set up by enterprises in some industries.

All trade union organizations are under the All-China Federation of Trade Unions.

b. Structure

The organization of trade unions at all levels is mandatory, based on the principle of democratic centralism. Committees of trade unions at all levels are democratically elected by the congress of trade union members or the congress of the representatives of trade union members, which supervises them. The committees of trade unions work under and report to the Congress. The Congress has the right to recall or replace its elected representatives and the members of the trade union committees.

Trade union organizations at the lower level are under the leadership of trade union organizations at a higher level.

3. Individual Labor Contracts

A labor contract is the agreement reached between a laborer and an employing unit for the establishment of the labor relationship and definition of rights, interests, and obligations of each party. It is a requirement for the establishment of a labor relationship.

Labor contracts concluded in violation of laws, administrative rules and regulations, and those concluded by resorting to measures such as cheating and intimidation are invalid and have no binding force *ab initio*. The invalidity of the contract has to be confirmed by the labor dispute arbitration committee or a people's court.

The labor contract shall be concluded in writing and shall include the following: (i) term of the contract; (ii) contracts of work; (iii) labor protection and working conditions; (iv) labor remuneration; (v) labor disciplines; (vi) conditions for termination of the contract; and (vii) responsibility for violation of the contract.

A probation period may be agreed upon in the labor contract, but the maximum probation period should not exceed six months.

There are specific grounds for termination or revocation of the contract by the employer or the laborer.

Peoples' governments of provinces, autonomous regions and municipalities directly under the Central Government shall work out the implementing measures for the labor contract system in light of their local conditions, and report measures to the State Council of record. In this regard, regulations for management of Tianjin Economic and Technological Development Zone, Shangdong Province, and Xiamen Special Economic Zone have been issued.

4. Collective Contracts

Staff and workers of an enterprise as one party may conclude a collective contract on matters relating to labor remuneration, working hours, rest vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to all the staff and workers for discussion and adoption.

Collective contracts shall be submitted to the labor administrative department after its conclusion. The collective contract shall take effect automatically if no objections are raised by the labor administrative department within fifteen days from receipt of the copy of the contract.

An effective collective contract shall have binding force upon the parties. Hence, the standards on working conditions and labor payments agreed upon in labor contracts concluded between individual laborers and the enterprise shall not be lower than those stipulated in the collective contracts.

5. Individual Dispute Settlement

a. Mediation

At first instance, the parties involved may apply for mediation of the dispute to the labor dispute mediation committee of their employing unit.

The labor dispute mediation committee may be established inside the employing unit. It shall be composed of representatives of the staff and workers, representatives of the employing unit, and representatives of the trade union. The chairman of the committee shall be the representative of the trade union. Agreements reached through mediation shall be implemented by the parties involved.

b. Arbitration

If mediation fails, one of the parties may apply for arbitration through the labor dispute arbitration committee, within 60 days from the date of the occurrence of the labor dispute. The arbitration committee may issue an adjudication within 60 days from receipt of the application. The parties involved must implement the adjudication if no objections are raised.

The labor dispute arbitration committee shall be composed of representatives of the labor administrative department, from the trade union at the corresponding level and representatives of the employing unit. The representative of the labor department shall be the chairman of the committee.

c. People's Court

The party not satisfied with the adjudication on arbitration may bring the case to the people's court, within fifteen days from the date of receiving the ruling.

Where on the parties involved neither brings a lawsuit nor implements the adjudication of arbitration within the fifteen-day limit, the other party may apply to a people's court for compulsory implementation.

6. Collective Dispute Settlement

In disputes arising from the conclusion of a collective contract, the labor administrative department of the local people's government may organize the relevant departments to handle the case and attempt a settlement.

If settlement cannot be reached, the dispute may be submitted to the labor dispute arbitration committee for arbitration.

A party not satisfied with the adjudication of arbitration may bring a lawsuit to a people's court within fifteen days from date of receipt of the adjudication.

H. India[20]

1. Nature and Purpose

India adheres to a framework of trade unionism, collective bargaining, and dispute settlement through conciliation and adjudication.

2. Trade Unions

There are requirements for registration of trade unions to be submitted to the Registrar of Trade Unions for each state. At least ten percent or 100 members of the union, whichever is less, shall subscribe to the application for

20. Trade Unions Act of 1926 as amended; Industrial Disputes Act of 1947.

registration. There is a provision for filing an appeal before the Industrial Tribunal or Labor Court in case of non-registration or restoration of registration.

3. Dispute Resolution

a. Works Committee

In case of an industrial establishment employing 100 or more workmen, a Works Committee consisting of representatives of employers and workmen engaged in the establishment may be constituted by the employer upon a general or special order of the appropriate government agency. The number of representatives of workmen on the committee shall not be less than the number of employer representatives. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen, and to settle any material difference of opinion with respect of such matters.

b. Conciliation Officers and Boards of Conciliation

The State government may appoint such number of persons as conciliation officers, charged with the duty of mediating and promoting the settlement of industrial disputes.

The appropriate State government may also constitute a Board of Conciliation for promoting the settlement of an industrial dispute. A Board shall consist of a Chairman and two or four other members. The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute upon recommendation of that party.

c. Courts of Inquiry

The appropriate State government may, as occasion arises, constitute a Court of Inquiry, for purposes of looking into any matter appearing to be connected with or relevant to an industrial dispute. The Court may consist of one independent person or such number of independent persons.

d. Labor Courts

The appropriate State government may constitute one or more Labor Courts for the adjudication of industrial disputes, relating to enumerated areas of

jurisdiction. It shall consist of one appointed person with experience as a judge or in judicial office. Labor Courts usually handle individual rights disputes.

Decisions of the Labor Courts are elevated to the High Court.

An appropriate government may refer any matter for adjudication to the Labor Court.

e. Industrial Tribunals and National Tribunals

The appropriate State government may constitute one or more Industrial Tribunals for the adjudication of disputes covering an industry. One on the members shall be a person with experience as a judge. Decisions of the Industrial Tribunals are elevated to the High Court, and thereafter the Supreme Court.

On the other hand, the Central Government may constitute one or more National Tribunals for the adjudication of industrial disputes involving questions of national importance or affecting establishments situate in more than one State. Decisions of the National Tribunals are elevated to the Supreme Court.

An appropriate government may refer any matter for adjudication of the Industrial or National Tribunals.

f. Effect of Referral of Disputes

When a dispute has been referred to the Conciliation Board, Labor Court, Industrial or National Tribunals, the appropriate Government may prohibit the continuance of any strike or lock-out in connection with such dispute in existence on the date of the reference.

g. Voluntary Reference of Disputes to Arbitration

The parties may refer a dispute to arbitration, and the reference shall be to such person or persons as an arbitration as may be specified in the arbitration agreement. The award of the selected umpire shall prevail and be deemed the arbitration award.

Further reference to arbitration may be made by the appropriate government, if it is satisfied that the persons making the initial reference represent the majority of each party. In this situation, the government may prohibit the continuance of any strike or lock-out in connection with such a dispute.

I. Indonesia[21]

1. Nature and Purpose

The "Pancasila" is an overriding national philosophy illuminating the legal system, where workers and employers interact in a "familial mode". It advocates a non-confrontational stance and dispute settlement through deliberation and consensus.

Trade unions acting in a free, open, independent, democratic, and responsible manner are allowed.

2. Trade Unions

Objectives and functions of trade unions are enumerated. A trade union sends written notification of its establishment to the local government agency responsible for manpower affairs for the sake of record keeping.

There are provisions on recording and dissolution of trade unions.

Disputes between trade unions shall be settled through deliberations by such unions. If deliberations fail to reach an agreement, the dispute shall be settled in accordance with valid statutory rules and regulations.

3. Collective Bargaining and Agreements

An employer has a duty to bargain in good faith once notified by a union. Collective bargaining takes place either at the enterprise or industry level. It shall be conducted in a non-adversarial fashion, and must be concluded within 30 days.

A collective labor agreement can be initially concluded for a two-year period, with a possible one-year extension.

In the absence of a union and collective bargaining, companies employing more than 25 employees are required to formulate company regulations specifying terms and conditions of employment in writing.

4. Dispute Settlement

Dispute settlement procedure has four levels: bipartite resolution at the enterprise level, the mediation level, regional committee level, and the central committee level.

21. Concerning Trade Unions or Labor Unions, Act No. 21, Aug. 4, 2000; Settlement of Labor Disputes, Act No. 22 (1957); Arbitration and Alternative Dispute Resolution Act, Law No. 30 (1999), Act on Collective Labor Agreements [1954].

a. Bipartite Resolution

Settlement at the company or bipartite level shall be in a spirit of deliberation and consensus. There is an elaborate procedure for issues that ripen into an industrial relations dispute, as follows:

i. if deliberation results in a consensus for settlement, a written agreement shall be made;

ii. if deliberation fails to result in a consensus for settlement, both parties may seek a settlement through the Board of Arbitration; and

iii. where both parties do not choose to settle through arbitration, either party or both parties shall bring the case to the Office of the Ministry of Manpower for settlement through mediation, upon giving a copy of the case, together with records of the deliberations, to the regional committee.

b. Mediation Level

If both parties fail to settle the dispute through arbitration, the mediation officer within seven days shall arrange for mediation and make an investigation. The mediation officer shall seek the best possible means of settle the case through deliberation or consensus. After seven days from date of settlement, the mediation officer shall forward any settlement agreement to the Regional Committee for industrial relations disputes, or to the Central Committee level.

If either or both parties reject a recommendation of the mediation officer, the case shall be forwarded to the Regional Committee for industrial relations disputes or to the Central Committee for decision.

If the dispute involves claims regarding rules on overtime pay, accident compensation and annual leave, the mediation officer shall request the assistance of the manpower inspector of the local office of the Ministry of Manpower in determining said benefit.

There are specific rules on mediation in public or regional enterprises.

c. Regional Committee

The Regional Committee is composed of a member of the Ministry of Labor as Chairperson and representatives of the Ministry of Industry, Ministry of Finance, Ministry of Agriculture, Ministry of Communications, and Ministry of Navigation as members, in addition to five members each from the labor and employer sectors.

A binding decision of the Regional Committee may be appealed to the Central Committee.

d. Central Committee

The configuration of the Central Committee is similar to the Regional Committee. The Central Committee can withdraw labor disputes from the Regional Committee if it deems necessary, as State or public interest may dictate.

Parties may ask the courts to declare the decision of the Central Committee as executory.

e. Ministerial Veto

The Ministry of Labor is empowered to nullify or postpone the implementation of a decision of the Central Committee if such is conducive to maintain public order and to protect the interest of the State. The decision of the Ministry may be appealed to the Administrative Court. In turn, the decision of the Administrative Court may be appealed to the Supreme Court.

J. Singapore[22]

1. Nature and Purpose

Singapore respects the creation of trade unions based on enumerated purposes, and adheres to a system of collective bargaining and peaceful resolution of disputes through conciliation and arbitration.

2. Trade Unions

Trade unions have the following statutory purposes: (a) promote good industrial relations between workmen and employers; (b) improve the working condition of workmen or enhance their economic and social status; or (c) increase productivity for the benefit of workmen and employers and the economy of Singapore.

The Registrar of Trade Unions issues the corresponding certification of registration of a trade union. The existence of a registered union in a particular trade, occupation or industry bars the registry of a new union.

There are provisions on cancellation or withdrawal of union membership.

22. Trade Disputes Act; Industrial Relations Act; Trade Unions Act.

The refusal to register or the cancellation or withdrawal of registration of a union may be appealed to the Minister of Labor, whose decision shall be final and unappealable.

3. Collective Bargaining

Only trade unions recognized by an employer may serve notice to bargain. The invitation to negotiate may be done either by the trade union of employees or trade union of employers, by serving a notice containing proposals for collective agreement and inviting either party to negotiate.

There are prohibited subjects of bargaining, e.g. employee promotions, transfers, and dismissals.

A memorandum of the terms of the collective agreement shall be in writing, signed by the parties, and delivered within one week to the Registrar. The Registrar, in turn, shall notify the Industrial Arbitration Court (IAC) for certification of the agreement.

Conciliation procedures will be adopted in case no agreement is reached after fourteen days from service of invitation to negotiate. The Minister may compel a party to attend conciliation conferences.

4. Strikes and Lockouts

Strikes and lockouts are regulated. A strike (industrial action) or lockout is illegal if: (a) it has an object other than the furtherance of a trade dispute; (b) it is in furtherance of a trade dispute of which an IAC has cognizance; or (c) it is designed or calculated to coerce the government either directly or by inflicting hardship on the community.

Illegal strikes or lockouts may be prosecuted before a District Court or Magistrate's Court and may be placed before the High Court for trial.

5. Dispute Settlement

a. Composition and Constitution of IAC

The IAC takes cognizance of all disputes relating to industrial matters. It shall be composed of two panels (ten each from the employer and workers' sector), appointed by the Minister upon invitation and nomination from the two sectors. Seven of the members of the employer panel are nominees in reply to the invitation of the Minister, while three shall be nominees by the Minister of Finance as nominees of the government as an employer.

There are various ways to constitute an IAC. In a particular trade dispute, the President may invite the trade unions of employees or employers to select their representatives to the IAC. If the parties unanimously select a

member of their respective panels, the President shall declare that such person be a member for that particular trade dispute.

The President may also choose from unions of employees or employers who represent the majority of the concerned sectors. The President of the IAC may also notify the Minister, who shall select a person from the panel, whom the President shall declare to be a member of the Court.

b. Cognizance of Disputes

The IAC shall take cognizance of a dispute by: (i) a joint request in writing by the parties to the Registrar that the dispute be submitted to arbitration; (ii) request in writing by a trade union and employer to the Registrar that under Section 51 of the Employment Act (dispute involving interpretation of annual wage supplements or other variable payments, and the power of the Minister to make recommendations for wage adjustments), the trade dispute be submitted to arbitration; (iii) request in writing by a party as to any matter arising from or connected with the transfer of employment that the dispute be submitted to arbitration; (iv) directive of the Minister with notice in the Gazette that a trade dispute be submitted to arbitration; or (v) proclamation of the President of Singapore that, by reason of special circumstances, it is essential to the public interest that a trade dispute be submitted for arbitration.

c. Determination of Trade Dispute

In the determination of the trade dispute the IAC gives due consideration, not only the interests of the parties, but also the community as a whole and in particular the condition of the economy of Singapore, as well as the recommendations of the Minister relative to wage adjustments under Section 49 of the Employment Act.

d. Procedures

The IAC shall not be bound by the Evidence Act and shall not act in a formal manner. It shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms.

e. Powers of the IAC

The IAC takes evidence on oath or affirmation, and may summon parties and witnesses and compel the production of books, papers, documents, and things. It may also undertake the following: (i) hear and determine a trade dispute in the absence of a party who has been summoned or served with notice to appear; (ii) conduct its proceedings or any part of it in private; (iii) refer a matter to an expert and accept his report as evidence; (iv) direct

parties to be joined or struck out; (v) order reinstatement or grant other relief as it may consider desirable; (vi) dismiss the trade dispute or part thereof if it appears trivial or that further proceedings are not necessary or desirable in the public interest; and (vii) generally give directions and do all such things as are necessary and expedient for the expeditious and just hearing and determination of a particular trade dispute.

The Attorney-General may intervene in proceedings before the IAC in a trade dispute relating to a matter of public importance.

f. Representation

A trade union may be represented by an officer or industrial relations officer selected by the union. A party cannot be represented by an advocate or solicitor or paid agent, except in contempt proceedings or by leave of court, in proceedings in which the Attorney-General has intervened.

g. Board of Inquiry

The Minister may create a board of inquiry to look into and make a report upon a matter defined in the notification as an industrial concern. It shall consist of a chairman and such other persons appointed by the Minister.

K. Thailand[23]

1. Nature and Purpose

Thailand affirms the right of a person to enjoy the liberty to unite and form a union, alongside the establishment of a collective bargaining and dispute settlement framework.

2. Trade Unions

A request for registration of trade unions in the private sector is filed with the Registrar of Trade Unions. Enterprise and industry-wide unions may be registered. At the enterprise level, there must be support of at least ten employees for purposes of registration.

Civil servants are not allowed to form unions, though they are allowed to form employees' associations.

3. Collective Bargaining

23. Labor Relations Act; An Act for the Establishment and Procedure for the Labor Court, B.E. 2522 (1979).

Both unions and unorganized employees have the right to bargain with their employers for better terms and conditions of employment. Both are entitled to submit written demands to bargain collectively. A written demand must have the signatures of at least 15% of the total number of employees.

A collective bargaining agreement must be registered with the Office of the Director-General of the Department of Labor within fifteen days from the date of signing.

In case of conflict in negotiations, the initiating party may notify the conciliator within 24 hours. If the conflict is not resolved, the dispute is transferred to voluntary arbitration. In case any of the parties is not satisfied with the decision of the voluntary arbitrator, an appeal may be filed with the labor courts. The last level of appeal shall be the Dika Court or the Supreme Court.

4. Dispute Settlement

Disputes are handled by the Central Labor Court, the regional labor courts, and the provincial labor courts.

a. Jurisdiction

i. Labor courts have jurisdiction over the following matters:

ii. disputes concerning the rights or duties under an employment agreement or terms concerning the state of employment;

iii. disputes concerning the rights or duties under the law relating to labor protection or the law relating to labor relations;

iv. cases where the rights must be exercised through the court according to the law relating to labor protection or the law relating to labor relations;

v. cases of appeal against a decision of the competent official under the law relating to labor protection or of the Labor Relations Committee or the Minister under the law relating to labor relations;

vi. cases arising from the ground of wrongful acts between the employers and the employees in connection with a labor dispute or in connection with the performance of work under an employment agreement; or

vii. labor disputes which the Minister of Interior requests the labor court to decide in accordance with the law relating to labor relations.

No other court of first instance shall accept cases falling under the jurisdiction of labor courts.

b. Composition and Appointment

The number of judges and associate judges shall be fixed by the Minister of Justice according to necessity. The number of associate judges for the employer and for those of the employees shall be equal.

Judges of labor courts shall be appointed by the King from among judicial officials.

There shall be a Chief Justice for the Central Labor Court and each regional labor court. The number of Deputy Chief Judges of the Central Labor Court and of each regional labor court shall be determined by the Minister of Justice, while every provincial labor court shall each have one Chief Judge.

There are qualifications for Associate Judges, who shall hold office for a period of two years, subject to reappointment.

There are enumerated grounds for termination from office, e.g. death, resignation, removal by the King for having been absent from assigned post for two consecutive times without justification.

c. Quorum

An equal number of judges and associate judges representing employers and employees shall form a quorum for adjudication. A judge of the labor court shall have the power to conduct any proceeding or issue any order whether or not joined by associate judges representing employers and employees, except in cases of adjudication.

d. Procedure

A labor complaint shall be filed with the labor court having territorial jurisdiction over the cause of action. For purposes of determining territorial jurisdiction, the place of work of the plaintiff shall be deemed as the place where the cause of action arose.

Employers and employees shall select representation, which may be an employer's association or union of which they are members or a competent official who is empowered under the law on labor relations and labor protection to take legal action in their behalf.

The labor court shall fix the date and time for the hearing and issue summons for the defendant and plaintiff to appear. During the first hearing,

the labor court shall mediate the parties to reach an agreement or a compromise. In case mediation fails, trial shall proceed.

The court shall issue an order or judgment within three days from closing of the trial. A judgment or order shall be binding only on the parties to the case. But the court may state that the judgment or order may be binding upon any other employer or employee who share a common interest in the subject of the case.

f. Appeal

Only questions of law may be appealed to the Supreme Court within fifteen days. An appeal does not stay execution of the judgment, but a motion for stay of execution may be filed with the labor court that issued the judgment.

In considering the appeal, the Supreme Court shall rely on the facts established in the labor court. If the facts are insufficient the Supreme Court may order the labor court to conduct further hearings, after which the case shall be returned to the Supreme Court.

IV. Comparative Review

A. Nature and Purpose

Most countries in the study affirm the workers' right to join or organize trade unions, with corresponding collective bargaining mechanisms and incremental dispute settlement procedures ranging from conciliation to adjudication. In the case of Laos, the system guarantees workers' representation even if no trade union has been established at the enterprise level.

South Korea, Japan, and Singapore make references to the attainment of industrial peace and the role of a sound industrial relations system in national development. As for Indonesia, "pancasila" lays down a "familial" Industrial Relations approach.

F. Trade Unions

All countries have a system of union registration, even for China and Vietnam where centralized structures at the national level are in place. But Indonesia requires only written notification of union creation for purposes of record keeping.

Japan, South Korea, Malaysia, and the Philippines prohibit unfair labor practices that violate the right to form or join trade unions.

While trade unions generally pursue the interests of its members and fellow workers, the Singapore statute reminds them of their duty to promote good industrial relations and achieve higher employee productivity.

Malaysia, Japan, Singapore and the Philippines have elaborate trade union organization provisions dealing with regulation of political and economic affairs.

Most countries have provisions on voluntary or involuntary dissolution of trade unions, usually undertaken by the same authority that facilitated union registration.

G. Collective Bargaining

Trade unions have the authority to negotiate collective agreements for and in behalf of its members and workers in the enterprise level. Japan and South Korea provide for the possibility of applying a collective agreement at the industry level.

In terms of union recognition, Malaysia provides for government intervention to ascertain "whether workmen are union members." The Philippines provides for a system of voluntary recognition and American-style certification election proceedings to determine representation status. Incidentally, Philippines and Malaysia provide for five- and three-year bars, respectively, on any representation challenge.

As for Thailand, a written demand to bargain collectively only requires the signatures of at least 15% of the total number of employees. In this case the term "agreement on employment conditions" is used rather than "collective agreement."[24]

Vietnam, Japan, South Korea, and Philippines provide majority ratification of an agreement to bind employees in the unit. China requires the draft agreement to be submitted to all workers for "discussion and adoption."

While collective agreements are effective once signed by the parties, China, Vietnam, and Singapore require submission of the agreement to government authority as a condition for effectivity. The Philippines, on the other hand, requires registration of the agreement for purposes of imposing a five-year bar on any representation challenge.

Singapore and Malaysia provide for prohibited subjects of bargaining.

Indonesia stipulates that despite the absence of a union and collective bargaining, companies employing more than 25 employees are required to

24. Mikio Yoshida, *Fundamental Characteristics of Thai Labour Law and the Direction of Reform*, 19 (3) Int'l J. of Comp. Lab. L. & Indus. Rel.. 347, 356 (2003).

formulate written company regulations specifying terms and conditions of employment.

H. Strikes and Lockouts

With the exception of China, all countries allow a regulated right to strike or lockout. Malaysia and Philippines, however, prohibit strikes in the public sector. In Vietnam, strikes are illegal in enterprises of public service and those essential to the national economy, or national security and defense.

Regulations pertaining to strike or lockout essentially refer to the dispute resolution mechanisms in address work stoppages and areas where such industrial actions are prohibited. Laos, for instance, prohibits work stoppages concerning the implementation of labor law and regulations, and where the parties have submitted the dispute to settlement or adjudication. In Singapore, a strike or lockout is illegal if it has an object other than the furtherance of a trade dispute, if it is in furtherance of a trade dispute of which an IAC has cognizance, or is designed or calculated to coerce the government either directly or by inflicting hardship on the community.

South Korea and Philippines require conciliation and mediation to be undertaken before the parties may resort to strikes or lockouts.

I. Dispute Settlement

All countries have an incremental approach to dispute settlement, allowing conciliation and mediation to take its course prior to arbitration and adjudication. Philippines, however, appears to emphasize the need for conciliation and mediation only in disputes that have been the subject of a notice of strike or lockout.

While conciliation and mediation function *ad hoc* or are enterprise-based, India and Philippines have permanent conciliation or mediation boards or services.

There appears to be a three-tiered basic formula: quasi-judicial arbitration or adjudication at the local level, appeal before a quasi-judicial body at the national level and judicial review by the courts.

Japan mandates the creation of the local quasi-judicial body by the local government authorities, with the national quasi-judicial arm under the jurisdiction of the Minister of Labor.

The middle-tier body in Malaysia is the Industrial Court, which is not a quasi-judicial agency.

The final judicial arbiter is usually the court of last resort, where only questions of law may be raised. Exceptions include Philippines, where there is an intermediate appellate court acting as the third tier, with the Supreme Court as the fourth. Also, in Indonesia the ministerial veto of a decision by the Central Committee adds another tier prior to recourse to the administrative court, and eventually the Supreme Court.

In Japan, special provisions on emergency adjustment of disputes involving public welfare undertakings allows the Prime Minister to decide such cases, with the assistance of the Central Labor Relations Commission.

The three main tiers in dispute settlement in Thailand and Singapore appear to be courts not necessarily bound by technicalities of law.

Laos and Vietnam have separate mechanisms for rights and interests disputes, with the former decided on appeal by the courts and the latter reviewed by quasi-judicial bodies.

Japan and China, on the other hand, provides for different systems pertaining to individual and collective disputes. In Japan, collective disputes undergo arbitration prior to resort to the courts after conciliation.

In Malaysia, the appearance of lawyers in the conciliation and mediation levels is prohibited, while Singapore extends the prohibition to appearances before the Industrial Arbitration Court.

Quasi-judicial and judicial bodies in dispute settlement are tripartite in nature. In Japan, public members of the Labor Relations Commission should not be an officer of a political party or should not receive remuneration from any other job or reward.

V. Challenges To Be Faced: Measures To Be Earned

A. Interface with International Labor Standards

1. Ratification Issues

The ratification record of countries in the study pertinent to the Industrial Relations ILS is dismal. Table 1 illustrates that only Philippines, Japan, and Indonesia have ratified the two fundamental industrial relations standards, while none of the 11 countries have ratified the Collective Bargaining Convention:

TABLE 1- INDUSTRIAL RELATIONS ILS RATIFICATION RECORD[25]

Country	*C. 87*	*C. 98*	*C. 54*
CHINA	-	-	-
JAPAN	14/06/65	20/10/53	-
INDIA	-	-	-
INDONESIA	9/06/98	15/07/57	-
LAOS	-	-	-
MALAYSIA	-	5/06/61	-
PHILIPPINES	29/12/53	29/12/53	-
SINGAPORE	-	25/10/65	-
SOUTH KOREA	-	-	-
THAILAND	-	-	-
VIETNAM	-	-	-

2. Substantive Mandates

As stated, most legislation of the countries in the study observe the aim of Convention Nos. 87 and 98, in terms of recognition of the right to organize and protection of the exercise of the right to organize.

Certain countries, however, provide more elaborate and adequate mechanisms in terms of the following guarantees of the two fundamental Conventions:

- the right of organizations to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs;
- the right of organizations to establish and join federations and confederations which shall enjoy the same rights and guarantees, including the right to affiliate with international organizations;
- freedom from dissolution in a manner that impairs the guarantees of Convention No. 87;
- protection of workers against acts of anti-union discrimination, particularly against refusal to employ by reason of trade union membership and against dismissal or any other prejudice by reason of union membership or participation in trade union activities;
- protection of workers' and employers' organizations against acts designed to promote the domination, the financing or the control of workers' organizations by employers' or employers' organizations; and
- machinery and measures to ensure respect for the right to organize and to promote the development of utilization of voluntary collective bargaining to regulate terms and conditions of employment.

25. ILO Homepage, *at* http://www.ilo.org (last visited Sept. 1, 2003).

Malaysia, Philippines, South Korea, and Japan appear to have express provisions prohibiting unfair labor practices that violate or undermine the right to organize under the fundamental Conventions. With respect to dissolution of authority, broad phraseology of grounds for revocation in Malaysia and Philippines may impair the guarantees in Convention No. 87.

Needless to state, the dream of making collective bargaining possible for all employers in Convention No. 154 remains elusive. The "progressive extension" of collective bargaining is yet to be seen. In the Philippines, for instance, Table 2 indicates that the number of Collective Bargaining Agreements (CBAs) registered and workers covered by such agreements are on a downtrend:

TABLE 2 – REGISTRATION OF CBAS 1999-2002[26]

Year	*Number*	*Percent Change*	*Workers Covered*	*Percent Change*
1999	3,093 (1998: 3,122)	-.093	478,751 (1998: 553,637)	-13.53
2000	2,604	-15.81	405,614	-15.28
2001	1,541	-40.82	237,204	-41.52
2002	1,352	-12.26	228,894	-3.50

The contribution of existing statutes and administrative rules to the promotion of collective bargaining needs to be revisited. It would also be interesting to ascertain whether the mechanism of workers' representation *sans* a union in Laos or the determination of rules or regulations in unorganized establishments in Indonesia have generated enough cooperation

26. Bureau of Labor Relations, Manila.

between labor and management. After all, the Collective Agreements Recommendation allows duly elected and authorized representatives of workers in the absence of workers' organizations.

While the mandate of the Voluntary Conciliation and Arbitration Recommendation on the establishment of a joint conciliation machinery with equal representation of employers and workers appears to have been observed in most statutes, the adequacy of selection mechanisms and efficacy of conciliation efforts may be the more consequential aspects of the Recommendation.

3. CEACR Concerns[27]

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has pointed out the following issues to some countries in the study, pertaining to Convention Nos. 87 and 98:

Japan was cited for the denial of the right to organize on the part of fire-fighting personnel. The Committee did not consider that the functions of fire defense personnel "are of such nature as to warrant the exclusion of this category of workers under Article 9 (of Convention No. 87)." The prohibition on the right to strike of public servants was also noted.

Indonesia was cited for the provision requiring unions to report on financial assistance from overseas sources. The Committee noted that such a requirement was "tantamount to requiring previous authorization for the receipt of funds from abroad." In addition, the failure to comply with the requirement should not warrant revocation and loss of trade union rights. The Committee also pointed out that the possibility of revoking union registration in the event of membership falling below a required minimum did not provide for a mechanism to appeal such a sanction. Indonesia's attention was also called insofar as the statute did not provide effective sanctions against anti-union discrimination and employer interference on the right to organize.

Philippines was asked to pass legislation that will grant public sector employees not engaged in the administration of the State the right to negotiate their terms and conditions of employment. In addition, the Committee asked for a review of the requirement that at least 20 per cent of workers in a bargaining unit are members of a union, as well as the requirement on number of locals to establish a federation. The Committee likewise observed that the jurisdiction of the Secretary of Labor and Employment on disputes in industries indispensable to the national interest

27. Comments made by the CEACR, *available at* http://webfusion.ilo.org (last visited Sept. 1, 2003).

was too broad, suggesting the more stringent "essential services" standard. It was also mentioned that the sanctions for participation in an illegal strike is disproportionate.

Singapore was asked to repeal a provision in the statute concerning approval of the Minister for Manpower of annual leave and sick leave benefits stipulated in a collective agreement that are more favorable than that stated in the Employment Act. Also, the Committee noted that transfer and dismissal of an employee should not be excluded from the scope of collective bargaining.

Malaysia was asked to repeal a provision limiting the scope of collective agreements for companies granted "pioneer status." The Committee likewise contended that issues on transfer, dismissal and reinstatement of an employee should not be excluded from the scope of collective bargaining. The government was also requested to provide information on how collective bargaining is encouraged and promoted in practice between public employers and public servants.

B. Access to Speedy Labor Justice

1. Simplified Procedures and Fair Representation

The framework of industrial relations as exemplified by the Conventions and Recommendations and easily determinable from the statutes will be negated by measures that render such a framework inaccessible to aggrieved parties. Since unionization rates are generally low and mostly involve individual claimants, labor courts play an important role.[28]

Matters on availability of legal assistance and elimination of bureaucratic hurdles in filing cases need to be addressed. In the Philippines, for instance, services of the Public Attorney's Office (PAO) are offered to indigents. Filing fees have been eliminated, and blank complaints are provided *pro forma* to facilitate access.

There is another aspect on the access to justice principle that requires attention. In India, a State government may refer a dispute to the Conciliation Board, Industrial or National Tribunals. This government power of referral has been manipulated by minority unions who engage in forum-shopping and seek to destabilize workplace relations.[29] It may be a case of opening the floodgates to confrontation.

28. Yoshida, *supra* note 13, at 361.

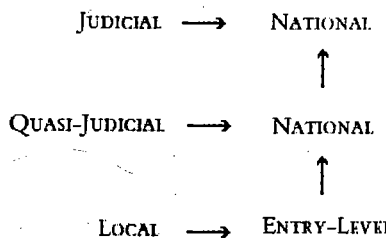
29. Interview with Prof. C.S. Venkata Ratnam, Director, Gitam Institute of Foreign Trade, Sept. 10, 2003.

Attached to the issue of fair representation in labor disputes is the necessity of lawyers in dispute settlement proceedings. Singapore expressly disallows the appearance of solicitors or advocates before the Industrial Arbitration Court, while Malaysia prohibits their appearance in conciliation proceedings. Whether this is an increasingly viable strategy for dispute resolution is a matter for further discussion.[30]

2. Tiers of Adjudication

As mentioned, the general trend is to have a three-tiered adjudication system as follows:

TABLE 3 – THREE-TIERED ADJUDICATION IN ASIA



The entry level may involve local authorities or national agencies with local operations. The final level may involve courts of last resort, which handle cases invoking only questions of law.

But procedures in India, Indonesia, and Philippines involve a four-tiered set up that may prove tedious and cumbersome for the parties. In the Philippines, an additional layer was cemented by the Supreme Court in *St. Martin Funeral Home v. National Labor Relations Commission*,[31] which required parties to petition for an extraordinary writ of certiorari to the intermediate Court of Appeals prior to elevation of the case to the Supreme Court. Ardent critics of the decision have pointed out that the Court's analysis may

30. In the workshop on dispute settlement in the recently concluded International Industrial Relations Association (IIRA) World Congress in Berlin, Germany (Sept. 8-12, 2003), the feasibility of such a prohibition appeared to have the support of the majority of around 100 individuals who were in attendance.

31. 295 SCRA 494 (1998).

not have been sanctioned by recent amendments to the law establishing the jurisdiction of the Court of Appeals.[32]

In Indonesia, efforts are underway towards eliminating two out of five steps in the adjudication process.[33]

Imposition and observance of disposition periods are also in order. In China, workloads of first-tier arbitration committees need to be declogged to facilitate the resolution process. Also, the machinery for collective dispute resolution needs to be elaborate enough to provide parties an expeditious procedure.[34] In the Philippines, the latest administrative issuance governing labor relations, Department of Labor and Employment Order No. 40-03, has dramatically reduced periods for the faster resolution of disputes.

3. Publication of Proceedings

Decisions and proceedings in labor cases may be facilitated and enhanced by publication. Posting of updates on cases may be undertaken in the agency web site, and rulings may be tem plated or placed in a compendium to inform the public of precedents. This, in turn, will ensure predictability and transparency of the system. In the Philippines, the 2004 National Expenditure Program for consideration by the legislature includes a budget for the computerization and templating of all decisions by the National Labor Relations Commission (NLRC). The project involves, among others, jurisprudence on dismissals and transfers, which constitute a bulk of the NLRC workload.

C. Maintenance of Integrity

Corruption is an issue hovering over bureaucracies all over the world. Regulatory agencies and dispute settlement bodies in the field of industrial relations are not insulated from this malady. Nearly all statutes have provisions on removal of dispute settlement conciliators, arbitrators, or adjudicators for misconduct while in office. The quality of administrative discipline exercised by heads of dispute settlement agencies, however, remains to be seen.

32. *See* Marlon J. Manuel, *Requiem to Speedy Labor Justice: An Analysis of the Effects and Underpinnings of the Supreme Court's Ruling in St. Martin Funeral Home v. NLRC*, 44 ATENEO L.J. 455 (2000).

33. Interview with Dr. Payaman J. Simanjuntak, Senior Adviser of the Minister of Manpower and Transmigration, Sept. 10, 2003.

34. Interview with Prof. Yanyuan Cheng, School of Labor and Personnel, Renmin University of China, Sept. 10, 2003.

D. *Efficacy of Adversarial Avoidance*

1. Measures

Adversarial avoidance essentially involves the dispute resolution processes leading to arbitration or adjudication. Needless to state, the efficacy of conciliation and mediation efforts prevents an overload in the dockets of quasi-judicial and judicial machinery.

Malaysia has the most elaborate conciliation and mediation mechanism. Indeed, conciliation and mediation appear to be successful in this part of the world.[35] But the Philippine statute falls short of laying down procedures on conciliation and mediation prior to arbitration or adjudication of disputes in general. Conciliation is highlighted only in the provisions of work stoppage in the latter portion of the Book on Labor Relations under the Labor Code.

In India, conciliation has encountered its limitations through parties who refuse to participate in conciliation proceedings or violate agreements executed during such proceedings.[36] In addition, conciliators are usually low-ranking officers who are ill-equipped to handle the technical resources of the parties.[37]

2. Indicators

Statistics pertaining to success rates in conciliation and mediation should be made available to the public. The National Conciliation and Mediation Board (NCMB) of the Philippines, for example, are posting a settlement rate increase of 5.9% in actual strikes for 2003. These achievements expressed in quantitative terms must be publicized. After all, promotion of dispute prevention and adversarial avoidance measures necessarily includes information on the success of these measures. Lack of public faith and confidence in a dispute settlement system is in itself an undermining factor, and is not conducive to an atmosphere of free collective bargaining and industrial peace.

3. ILO Technical Assistance

Conciliation and mediation workshops are just one of many forms of technical assistance that the ILO provides to member States. Beyond the traditional training sessions in Turin, Italy, perhaps an intensified effort could

35. Interview with A. Sivananthiran, ILO Senior Industrial Relations Specialist, Sept. 11, 2003.

36. Interview with Prof. Ratnam, *supra* note 16.

37. *Id.*

be undertaken in the countries forming part of the study, to enhance conciliation and mediation success rates.

E. *Harmonization Redux*

1. Core Industrial Relations Values

The fundamental industrial relations Conventions contain core industrial relations values that boil down to the following: (a) respect for a worker's right to organize or join a trade union; and (b) promotion of collective bargaining as an approach towards sound industrial relations. These core industrial relations values could be the foundation of ILO efforts to promote Convention Nos. 87 and 98.

Beyond harmonization, an ILO Declaration in this regard could be in the offing. Indeed, unconditional or absolute standards may be realized through preemptive legislation, because "harmonization" may be more applicable to "relative" standards conditioned on a country's level of development. But it has been stated that in collective bargaining, each country's own institutions, customs, and labor relations practices have given rise to labor organizations, employer organizations, and labor relations professionals who have a vested stake in the continuation of their own national system. Hence, for collective labor rights, both harmonization and preemption may be slow to develop.[38]

2. Quantitative Indicators

In the same manner that uniform statistical data should be available for conciliation and mediation, arbitration and conciliation should have its own uniform set of statistics that easily provide indicia of the quality of dispute settlement in an ILO member State. A few basic data may be suggested:

Disposition Rates. This refers to the number of cases disposed as against the number of cases received and carried over from the previous year. This statistic reflects the number of cases resolved in a given calendar year.

Aging of Cases. This refers to the disposition periods in the resolution of cases. This represents delivery of speedy justice in labor cases.

Reversal Rates. This refers to the number of affirmations and reversals experienced by a lower-tier agency from intermediate appellate courts or courts of last resort.

38. Katherine Van Wezel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 MICH. J. INT'L L. 987, 1005-1006 (1995).

V. Role of Courts in Policy-Making: Should A Strategic Choice Be Made?

This study concludes on a querulous note.

In 1992, a series of papers submitted to the 9th World Congress of the International Industrial Relations Association (IIRA) pointed towards the question of whether industrial relations is a function of strategic choice or a matter of ideology. With the demise of Communist-bloc influence in the early 90s, it was concluded that actors in the industrial relations system can exercise strategic choice in industrial relations.[39] There is general agreement that State in modern society must act in the economic sphere so that the population has access to a sufficient amount of goods and services.[40]

Are labor judges insulated from the process of selecting an industrial relations model for countries in the Asia-Pacific region? The venerable Dean Roscoe Pound considered it imperative for legal thinking to be more comprehensive in scope so as to include an understanding and appreciation of the actual effect that law and jurisprudence would have on the social life.[41] Pound and Cardozo argued that the responsibility of keeping the law up to date is a highly specialized undertaking, where the expert knowledge of a trained judiciary is imperative.[42]

In the Philippines, the Supreme Court has modified a longstanding rule requiring retroactivity of collective agreements,[43] extended the mandatory lifetime of such agreements from five to ten years,[44] and reversed an original ruling applying rigid security tenure of arrangements to overseas employment contracts[45] – all in the name of preserving a balance that should not be destructive to the employer as a social partner in development. On the other hand, it has recently proclaimed that usual employer resort to union legitimacy questions during representation proceedings is prohibited under the law and the administrative rules.[46] Whether tilted towards one

39. Janice R. Bellace, *The State and Industrial Relations: A Strategic Choice Model*, 14 (3) COMP. L.J. 249, 250-51 (1993).

40. *Id.* at 269.

41. Jose Victor V. Chan-Gonzaga, *The Province and Duty of the Courts: Law and Policy*, 46 ATENEO L.J. 174, 223 (2001).

42. *Id.* at 224.

43. MERALCO v. Secretary of Labor, 302 SCRA 173 (1999); Motion for Reconsideration, 326 SCRA 172 (2000); and Second Motion for Reconsideration, 337 SCRA 90 (2000).

44. Rivera v. Espiritu, G.R. No. 137385, Jan. 23, 2002.

45. Millares v. NLRC, G.R. No. 110524, July 29, 2002.

46. Tagaytay Highlands International Golf Club Inc. v. Tagaytay Highlands Employees Union-PTGWO, G.R. No. 142000, Jan. 22, 2003.

social partner or not, labor jurisprudence has largely directed the shape of industrial relations in the Philippines.

Protective labor legislation is an exhortation by international action in industrial relations. Current labor legislation in Asia has responded to a certain extent. The call is made once again; an adequate response should be expected.