Coding CEACR Reports on ILO Conventions Nos. 87 and 98: A Proposed Methodology

Irini Georgiou and Lucio Baccaro

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Contents

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1. Introduction

The ILO supervisory machinery produces a wealth of information on labour standards. However rich, this information is unstructured and, as such, difficult to systematize for the purpose of presenting overviews of the application of ILO standards, following the progress made by States in the implementation of particular Conventions, or highlighting the most problematic areas.

This paper proposes a methodology for coding the reports of the Committee of Experts on the Application of Conventions and Recommendations.[1] It focuses on freedom of association and collective bargaining, a fundamental labour right, also recognised as a core labour right since the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work. It looks at the two fundamental ILO Conventions in this field, the Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87) and the Right to Organise and Collective Bargaining Convention (ILO No. 98)[2] and considers CEACR reports on these Conventions in the period between 1990 and 2002.

The proposed methodology seeks to capture and convey the Committee's assessment in an accurate and consistent manner and to minimise the possibility of coder bias, in other words, the possibility of subjective judgment. For this reason, consistent effort was made to articulate the proposed set of rules in a clear and transparent fashion. As indicated, this paper proposes a methodology for coding the Committee's reports but falls short of proposing a methodology for measuring State compliance with Conventions 87 and 98 or, put differently, a methodology for producing rankings of State performance with respect to the standards enunciated in the two aforesaid Conventions. Although part four supports the idea of developing an assessment scheme on the basis of the proposed coding methodology, and hence acknowledges the feasibility of producing sound and accurate measurements, the authors of this paper consciously refrained from articulating a methodology for measuring State conformity – or alternatively non-conformity—

[1] Hereinafter also Committee of Experts or CEACR.
[2] Hereinafter also Convention 87 and Convention 98 respectively.

with Conventions 87 and 98 because of the absence of an authoritative pronouncement as regards, on the one hand, the relative importance of the rights envisaged in Conventions 87 and 98 and, on the other, the relative severity of the violations thereof.[3]

The paper comprises four parts. Part two provides an overview of the work that has already been carried out in the field. Part three gives an account of the advantages and the limitations of using the CEACR reports as sources. Part four articulates the methodology developed for drawing up the list of key concepts and for coding the relevant data and proposes the idea of elaborating a scheme for assessing the coded information. Part five discusses the empirical results obtained from applying the methodology to the CEACR reports on eleven countries. These are presented in the appended tables. Part six comprises the conclusions.

2. Literature Review

The last few years have witnessed the emergence of a growing body of literature that seeks to measure State compliance with international labour standards and to identify and tackle the associated methodological problems. International organisations, academics and national research institutions are increasingly involved in efforts to develop scores indicative of the degree to which States' observe international labour standards. The following pages give an overview of the major contributions.

Compa, L., "Assessing Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards"

The paper of Lance Compa "Assessing Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards"[4] was designed as a contribution to the project of the United States National Academy of Sciences on international labour

[3] There is consensus about the primacy of fundamental human rights pertinent to freedom of association such as the right to life and physical integrity and the right to freedom and security of person and the right to protection of property. Similarly there is agreement as to the principal importance of the right of workers and employers to establish occupational organizations of their own choosing. Nonetheless, no definitive conclusions have been reached regarding the hierarchy among the distinct rights enunciated in Conventions 87 and 98, or regarding the hierarchy among the various ways in which these rights are violated.

[4] Compa, L., "Assessing Assessments: A Survey of Efforts to Measure Countries' Compliance with Freedom of Association Standards", School of Industrial and Labor Relations, Cornell University, 2002. An abridged version of this paper was published in the Comparative Labour Law and Policy Journal, Vol. 24, 2003, pp. 283-319.

standards. Focusing on freedom of association, the paper gives a comprehensive account of the existing reporting systems of labour rights violations and the efforts undertaken for developing an index of State compliance with international labour standards and draws attention to the main issues to be addressed in this context.

In part one, Compa identifies the main elements that any system for the assessment of freedom of association ought to examine, namely freedom of association for trade union purposes, the right to organise, the right to collective bargaining and the right to strike. Touching on the distinction made in the field of human rights between negative and positive rights, he explains that the rights pertaining to freedom of association cannot be seen as merely negative, but that they also require States to take positive action to ensure their effective exercise.[5] Part two looks at the difficulty in obtaining accurate comparable data from: a) indirect measures (ratification rates, industrial relations indicators, enforcement capacity measures, national laws) and b) descriptive reports from State agencies, workers' organisations, and intergovernmental- and non-governmental organisations. The difficulty, according to Compa, lies in the fact that, by itself, none of the above measures and sources captures all dimensions of freedom of association; hence the need for a composite index, *i.e.* an index that draws on a variety of information.

Part three, which carries the bulk of the analysis, reviews the available reporting mechanisms and compliance measurement systems. These fall into three main categories: 1) country-specific and complaint-based descriptive reports (eclectic reports), 2) comprehensive descriptive labour rights reports (regular reports), and 3) comparative scoring and ranking systems. Group (1) includes (a) Government agency reports (United States Department of Labour of International Labour Affairs reports, United States Trade Policy Staff Committee reports, Overseas Private Investment Corporation reports, United States National Administrative Office reports under the North American Agreement on Labour Cooperation, Congressional Research Service reports), (b) International agency reports (United Nations reports, such as United Nations Human Development report, the United Nations High Commissioner for Human Rights reports – not rarely dealing with labour rights—, International Labour Organisation review of follow-up reports to the 1998 Declaration on Fundamental Rights and Principles at work,

[5] In the words of L. Compa: "[Every assessment system shall] engage in a four part, two-step analysis: for all the rights at stake –association, organising, bargaining, striking- is the government properly not interfering, so that the rights can be exercised, and is the government properly acting in a positive fashion so that the rights are protected?", *Ibid*, p. 5.

World Bank reports, North American Free Trade Agreement Labour Secretariat reports), (c) Private Actors' reports (American Federation of Labour and Congress of Industrial Organisations reports, NGO reports, including those monitoring the application of corporate codes of conduct). The second group comprises (a) United State Department Annual Human Rights report, (b) the International Confederation of Free Trade Unions Annual Survey of Violations of Trade union Rights, and (c) the International Labour Organisation Committee of Experts on the Application of Conventions and Recommendations and Committee on Freedom of Association reports. Group (3) covers studies which, drawing on the information provided by the reporting mechanisms indicated above, seek to construct labour rights indicators. These are: (a) the 1996 OECD report "Trade, Employment and Labour Standards", (b) The paper by D. Kucera from the International Institute for Labour Studies, "The Effects of Core Worker Rights on Labour Costs And Foreign Direct Investment: Evaluating the Conventional Wisdom", and (c) Verité's CalPERS Labour Rights Screen.

The author discusses the merits and shortcomings of each of the foregoing reporting and assessment systems. Eclectic country-specific and complaint-based descriptive reports (group 1) provide in-depth information but at the same time fall short of providing comparative analysis. Comprehensive descriptive labour rights reports (group 2), on the other hand, may very well be used for the development comparative assessment schemes for a number of reasons: they are broad in coverage, they examine all rights pertaining to freedom of association, and, in particular, they invariably apply a standard methodology to all countries under investigation. Moving on to group (3), the existing assessment systems, Compa gives a short description and appraisal of the three studies mentioned earlier.

Before submitting his conclusions and recommendations, the author, briefly refers to the relevant academic research, criticising academics from all disciplines involved -labour law, economics and political science- for not being acquainted with the work of the others and stressing the importance for a cross-disciplinary approach in any new effort to assess State compliance with freedom of association.

In the final part of the survey, noting that the content and design of an assessment system should be determined by the use for which it is aimed and that any database should give indication of the evolution, improvement or deterioration, in all countries examined, Compa recommends that the contemplated assessment methodology should:

- Be developed on the basis of "evaluation criteria" or "template questions" covering all aspects of freedom of association.
- Aim at constructing a composite index, *i.e.* an index that captures both industrial relations measures and information from other sources. However, caution should be exercised in the interpretation of the respective indicators and data.
- Seek to capture the extent of anti-union discrimination in all countries examined.
- Seek to quantify institutional and enforcement capacity indicators.
- Rely on a number of descriptive documentary sources.
- Rely on reports concerning sectors' and companies' performance.
- Consider information collected from interviews with key actors.
- Seek to apply consistently the same judgment and interpretation to all countries examined.
- Adopt a cross-disciplinary approach.

Polaski, S., "Constructing a Quantitative Index for a Database on Core Labor Standards"

Another important contribution to the work of the National Academies' Committee on Monitoring International Labour Standards is that made by S. Polaski.[6] In her proposal, Polaski indicates the need for the construction of a database that contains not merely qualitative information but also a quantitative index of country compliance with the core labour standards. The index and the database would each serve a different purpose: "The index should be presented as only the first step in evaluating a particular country with the stated caveat that, taken in isolation, it is an incomplete gauge of a country's performance. The qualitative resources in the database would then provide depth and specificity on the situation. [T]he value-added would be to maximise the usefulness of time spent by the government or private user, by pointing initially to the comparative status of a particular country on a particular core standard and then providing details of the actual situation in the country."[7]

Country compliance with each of the core labour standards would be assessed on the basis of four criteria, namely, national labour laws, enforcement capacity, outcome measures –the actual enjoyment of the core labour rights—and ratification of the respective ILO Conventions. Each of

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[6] Polaski, S., "Constructing a Quantitative Index for a Database on Core Labor Standards" Proposal Prepared at the Request of the Committee on Monitoring International Labour Standards, National Research Council of the National Academies, 2002.

[7] *Ibid*., pp. 1-2.

the first three criteria, *i.e.* labour laws, enforcement capacity and outcome measures, shall account for thirty per cent of the overall score and the fourth, ratification, for ten per cent. For each of the four criteria, a country would be assigned a grade between four and zero, four representing respectively adequate legislative protection, full enforcement capacity, positive outcomes, including effective proactive and adjudicatory mechanisms, positive outcomes[8] and ratification of all relevant ILO instruments, while zero indicating the lack of all of the above. The composite index of the overall performance of a country would be constructed by multiplying the rating for each of the four factors by the weighting corresponding to that factor and then adding the results. Adding and subtracting points would capture the dynamic element in the application of core labour standards; one point would be added to the overall score of a country in case of progress and, conversely, one point would be subtracted in case of deterioration.

For the purpose of maximising the usefulness of the database, Polaski proposes that it not merely provide the substantive information derived from sources such as the International Labour Organisation reports, the United States State Department reports, as well as material drawn from non-governmental organisations, voluntary corporate monitoring and reporting and academic studies, but moreover serves to sort the available information in order of importance, depth, reliability and other relevant criteria.

National Research Council of the National Academies, Committee on Monitoring International Labor Standards, "Monitoring International Labor Standards: Techniques and Sources of Information"[9]

The Committee on Monitoring International Labour Standards was convened by the National Research Council of the United States National Academies for the purpose of creating a system for monitoring international labour standards.[10] According to the specifications of the

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[8] Polaski draws attention to the fact that quantitative data concerning union density, collective bargaining coverage *etc*. requires interpretation.

[9] National Research Council of the National Academies, Committee on Monitoring International Labor Standards, "Monitoring International Labor Standards: Techniques and Sources of Information", The National Academies Press, Washington DC, 2004.

[10] The request came from the Bureau of International Labour Affairs of the United States Department of Labour. The Committee's mandate, as indicated in the report, was to: a) identify relevant and useful sources of country-level

Department of Labour's Bureau, the four core labour standards identified in the 1998 ILO Declaration of Fundamental Principles and Rights at Work, as well as a set of rights identified as "acceptable conditions of work"[11] would serve as criteria for assessing compliance. The Committee's work draws heavily on the study of L. Compa and the proposal of S. Polaski. It comprises two parts, a report published in 2004 with the title: "Monitoring International Labor Standards: Techniques and Sources of Information", and a database structure, known as webMILS, also made to a publicly accessible website. The report provides a comprehensive review of country-level information sources and a methodology for monitoring State compliance with core labour standards and acceptable conditions of work.[12] The database, which forms an integral part of the assessment system developed by the Committee, serves as a tool for organising and presenting in a systematic fashion all available information, extant and potential, relevant to core labour standards. It is designed to accommodate all existing information on three sets of indicators – 1) legal framework, 2) government performance and 3) overall outcomes— for the four core labour standards and acceptable conditions of work and aims at providing a model for the use and evaluation of the available information. Its main component is the "country page", intended to present in a structured manner all available information for a given country on the three sets of indicators identified in the preceding paragraph.[13] Although the Committee confined itself in collecting information only for the United States of America, it expressed the hope that the database would be further expanded to include information on labour standards for all countries. The database shall be open for use by governments, intergovernmental and non-governmental organisations, corporations and other assessors, who, nonetheless, shall take into consideration the Committee's guidelines and cautions concerning definitions and information sources.

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data on labour standards and incorporate them into a database tailored to the needs of the Department of Labour's Bureau of International Labour Affairs, b) assess the quality of existing and potential data and indicators that can be used to systematically monitor labour practices and effectiveness of enforcement, c) identify innovative measures to determine compliance with international labour standards on a country-by-country basis, d) explore the relationship between labour standards compliance and national policies relating to human capital issues, e) recommend sustainable reporting procedures to monitor countries' progress toward implementation of international labour standards. *Ibid*., p. 12.

11 This includes hours of work, wages and occupational health and safety.

12 The last chapter also looks at the relation between human capital and compliance with international labour standards.

13 The phrase "all available information" shall be understood to encompass not merely country-specific data but also the Committee's discussion of the nature of the various indicators, their complexities, questions of interpretation as well as presentations of all potential sources of information. National Research Council, *op. cit.* (note 9), p. 273.

The report comprises 9 chapters. In the first chapter, "Introduction and Overview", the Committee presents its assignment and gives a brief outline of the report's and database's structure. It discusses the four sets of rights enunciated as core labour standards in the ILO 1998 Declaration, and identifies the main difficulties involved in any endeavour to assess compliance with labour standards, namely, the absence of precise definitions for core labour standards, the lack of operational indicators of compliance with core labour standards, the issue of differentiating between intention and capability to comply, also taking into account the scarcity of resources and domestic priorities, the difficulty of having accurate, representative and comparable sources of information on compliance, the problem of drawing valid conclusions from the available sources, and the intricacy of assessing compliance over time caused by changes in definitions and sampling methods.[14] Before submitting its general recommendations,[15] the Committee gives guidelines on the use of the database and other sources of information and defines the framework for analysing compliance indicators. With regard to the latter, mindful of the fact that the purpose of an assessment also determines the use of the relevant information, the Committee rejects the idea of analysing the data to produce what it calls "a seemingly precise, linear ranking" or that of "using precise numerical weights for each of the indicators in order to assign countries to categories".[16] Instead, the Committee opts for an approach similar to that taken by the International Labour Organisation supervisory system, namely that of identifying the areas in a country's law and practice which do not conform to international standards[17] and making suggestions for improvement. In the Committee's view, the established indicators and the database structure should help bring more transparency to the

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[14] "In sum, the problem faced by policy makers working in this area is similar to the problem faced in other areas: integrating raw, qualitative, and quantitative data from multiple sources of differing reliability into valid and fair judgments about performance." *Ibid*., p. 19.

[15] The Committee recommends that: a) the United States Department of Labor improve, maintain and update the Committee's website database; b) this improved website database be publicly accessible with a mechanism that allows for public comment; c) the United States Department of Labor, working with other federal agencies and international institutions, support programs designed to strengthen reporting and information through capacity building in particular countries; d) the United States Department of State and the United States Department of Labor devote high priority to monitoring labour standards, to developing greater expertise in this area, and to improving coordination between the two departments; e) the United States government, using agencies such as the National Science Foundation, fund research and development on methodologies for monitoring labour standards. *Ibid*., p. 29.

[16] *Ibid*., p. 26.

[17] For analysing the existing data, the Committee developed a matrix framework capturing both the seriousness of the problems in a given country –three levels: some problems, more extensive problems and severe problems—and the direction of change –three possibilities: improving, steady and worsening. *Ibid*., p. 27.

processes for making assessments of State compliance with labour standards under various programs and agreements.

Chapter two presents the existing official and non-governmental information sources. These include international organisations, national agencies and non-governmental organisations. Under the first category, the Committee lists the following: 1) the International Labour Organisation (Committee of Experts on the Application of Conventions and Recommendations reports, follow-up reporting under the 1998 Declaration, Committee on Freedom of Association reports, umbrella database on labour statistics, key indicators of the labour market, statistical information and monitoring concerning the Program on Child Labour, database on national labour laws, database on labour administration, information on technical assistance), 2) the United Nations (reporting mechanisms under the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the Optional protocol to the Conventions on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, and the Convention on the Elimination of all Forms of Discrimination against Women, the United Nations High Commissioner for Human Rights, the United Nations Educational and Scientific Council, and the United Nations Children's Emergency Fund), and 3) the World Bank reports and quantitative data. The second category includes information from national agencies such as: 1) the United States Department of State, 2) the United States Social Security Administration, 3) the United States Department of Labour, Bureau of International Labour Affairs, 4) Congressional Research Service Reports, 5) the United States Government complaint-based reports, 6) the United States Trade Representative and Trade Policy Staff Committee, 7) the United States Overseas Private Investment Corporation, 8) the United States, Canadian and Mexican reports under the North American Free Trade Agreement, 9) quantitative data from national statistical agencies. In the third category, the Committee considers information provided by non-governmental organisations with ongoing broad or global coverage, for instance: 1) the International Confederation of Free Trade Unions, 2) Freedom House, 3) Human Rights Watch, 4) Lawyers Committee for Human Rights, and also information from non-governmental organisations' *ad hoc* reports, such as 1) the Global Alliance for Workers and Communities, 2)

the International Labour Rights Fund, 3) the National Labour Committee, 4) foreign non-governmental organisations and websites. In closing, the Committee also briefly refers to the relevant academic research.

In chapter three, the Committee reviews non-governmental labour monitoring systems. It discusses the various initiatives and evaluates their role in improving labour standards. The existing systems are grouped into three main categories. In brief, these are the following: 1) internal firm compliance monitoring (e.g. the Safety, Health, Attitude of Management, People Investment, and Environment Audit established by Nike), 2) external monitoring and certification (Fair Labour Association initiative, Social Accountability International and SA8000, Worldwide Responsible Apparel Production Certification Program, Ethical Trade Initiative), and 3) independent investigations and verification (Worker Rights Consortium).

Each of the remaining five chapters focuses on one of the core labour standards and acceptable conditions of work –chapter nine deals with the relation between human capital and international labour standards compliance. As regards the effective exercise of trade union rights, chapter four examines freedom of association, the right to organise –with the possibility of including the right to strike— and the effective recognition of the right to collective bargaining. The assessment of each of these domains follows on the basis of the three sets of indicators established, namely, the legal framework, government performance, and overall outcomes. In developing the indicators the Committee affirms its adherence to the interpretations given by the ILO supervisory bodies in their treatment of issues arising under Conventions Nos. 87 and 98 and within the follow-up reporting to the 1998 Declaration. It emphasises the importance of looking at both the negative and positive aspects of the components of freedom of association, as recommended by L. Compa, and draws attention to complex issues, *inter alia*, closed shop- and right-to-work laws, permanent striker replacement, labour-management councils, labour related corruption.

For assessing the legal framework –first set of indicators— the Committee proposes twenty-one indicator questions, including ratification, exclusions and restrictions on the right to establish and join organisations, on the right to collective bargaining *etc*.[18] Thirteen indicators evaluate government performance —second set of indicators— capturing both the level and the

[18] Indicators assessing the legal framework make up group A. Those assessing government performance make up group B and those assessing the overall outcomes group C. *Ibid*., pp. 109-119.

efficacy of governments' efforts.[19] Hence, the developed scheme examines enforcement of laws (prompt and effective prosecution, excessive delays, costs, independence of the judiciary, *etc*.), the positive agenda of promoting compliance (educating workers, training government officials, facilitating dissemination of best practices, facilitating tripartite social dialogue, *etc.*), as well as the amount of resources allocated to enhancing freedom of association (budget and personnel, caseloads of administrative and judicial bodies, frequency of labour inspections, *etc.*). Four indicators assess the overall outcomes. These indicators are: union density, frequency and length of legal strikes, percentage of workers covered by collective bargaining agreements, and incidents of discrimination against union organisers, unions, or employers associations. In a discussion of the intricacies of the latter set of indicators, the Committee cautions against taking them at face value and underlines the need for contextual interpretation, noting that "quantitative data on freedom of association and collective bargaining strongly need to be interpreted and placed in context… since the raw data could point in diametrically opposite directions about compliance".[20]

Following the review of various reporting and monitoring systems, from which information specific to freedom of association can be extracted,[21] the Committee recommends that: 1) the United States Department of Labour, and the International Labour Organisation, support systematic data collection by providing technical assistance to developing country governments to add questions to household surveys relating to freedom of association and effective recognition of the right to bargain collectively, and 2) all principal reporting bodies in the United States Government, particularly the United States Department of Labour and the United States Department of State, gather data related to the full list of indicators of freedom of association and the right to collective bargaining identified in the report and database system.[22]

The work of the National Academies offers a comprehensive, functional and transparent framework for prospective assessments of compliance with international labour standards. It does not propose a methodology for producing scores –in other words numbers— of country performance on freedom of association; rather, it offers a well-designed scheme for collecting and systematising all relevant information that exists and hence allows for the identification of

[19] *Ibid*., pp. 116-117.
[20] *Ibid*., p. 131.
[21] Here, the Committee falls back on the review made by Compa, *op. cit.* (note 4).
[22] National Research Council, *op. cit*. (note 9), p. 132.

"problematic areas", *i.e.* the difficulties countries face in their efforts to implement international labour standards. As such, it may not be the most suitable tool for those who want to have concrete figures and use them in econometric models to examine the links between labour conditions and indicators such as foreign direct investment, growth, employment, *etc*. The approach of the National Academies appears to takes due notice of the fact that, at the present stage, there does not exist an authoritative pronouncement or agreement as to which of the rights pertinent to freedom of association for trade union purposes merit greater protection or which violations warrant more severe sanctions,[23] and, thus, of the possibility of producing arbitrary rankings of country compliance with international labour standards.

Organisation for Economic Cooperation and Development, "Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade"[24]

The method developed by the OECD for constructing an index of State compliance with ILO Conventions 87 and 98 was one of the first efforts to quantify State performance on core labour standards. The objective of the study in question was to examine possible links between core labour standards, trade, foreign direct investment, economic development and employment. Constructing an index of compliance with labour standards was only a means to that end.

To assess country performance in freedom of association and collective bargaining, OECD researchers calculate a compliance index for each country and each year in the period between 1980 and 1994, on both Conventions.[25] They rely on the information provided in the reports of the Committee of Experts and those of the Conference Committee on the Application of Standards[26] during the aforementioned period. In the observations of these bodies, OECD

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[23] See footnote 3.

[24] Organisation for Economic Cooperation and Development, "Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade", OECD Publications, Paris, 1996. An updated version entitled "International Trade and Core Labour Standards" was published in 2000.

[25] The index was calculated according to the formula: Index $^{ct} = \Sigma i[A \times B]\, i^{ct}$, where i = number of observations made per annual country review, c = country, t = year, ranging from 1980 through 1994. *Ibid*., p. 234.

[26] Hereinafter also CCAS. The Committee on the Application of Standards is a tripartite body that comes together once a year during the International Labour Conference to discuss the observance by State Parties of their obligation to abide by ratified Conventions and to report on the efforts made to give effect to the provisions of non-ratified Conventions. In practice, the Committee on the Application of Standards deals with cases already examined by the Committee of Experts. It does so not as an appeals body, but rather as a forum, which offers the opportunity for a

researchers identify restrictions on freedom of association and classified them into the following categories: 1) Physical violence against union members, their belongings, publications (physical violence, seizure of union premises, seizure of publications); 2) Violation of the right to organise (preventing union establishment, mandatory single union structure, exclusion of categories of workers or sectors, prior authorisation requirements, membership or establishment requirements, single international union affiliation); 3) Violation of union activity rights (restrictions on setting by-laws, eligibility requirements for leaders, restriction of strikes, excessive government interference in internal affairs, interference in elections, prohibition of political or religious activity); 4) Dissolution, suspension of a union; 5) Restrictions on joining federations, confederations; 6) Anti-union discrimination; 7) Employer interference; 8) Restriction of collective bargaining (wage setting and scope). Each of these categories, including the subcategories, is assigned a ranking from five to one depending on their severity –four for the most severe and one for the least severe (A= category of observation). The Committees' evaluation of the observed restrictions is incorporated into the assessment by assigning a number between four for most critical evaluations to zero for favourable evaluations (B= category of evaluation). Improvement or deterioration over time was designated respectively through decline or rise in the index.

What appears to be the weakness of OECD's contribution is the absence of a clear reasoning as regards the evaluation process. The annex to the study that presents the methods applied for producing an index of compliance with ILO Conventions 87 and 98 does not put forward any explanation as to why the exclusion of certain sectors or categories of workers from the rights stipulated in Conventions 87 and 98 is less severe a violation than the prohibition of collective bargaining for certain categories of workers, or why the prohibition of political activity, and hence of the right to publicly express political opinions is less severe a violation than the imposition by a government of strict eligibility requirements for trade union office.

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direct dialogue between governments, employers and workers concerning the difficulties encountered in the application of ILO instruments. After discussing the CEACR general report, the Conference Committee on the Application of Standards selects from the observations contained in the reports of the Committee of Experts those which it considers as important and invites the respective governments to supply further information. The Committee's report submitted to the plenary for approval summarizes in special paragraphs cases of "special concern", "continued failure to apply" for persistent discrepancies, "failure to appear before the Conference, as well as cases of "failure to fulfil formal obligations", *i.e.* to submit reports or to bring for ratification before the competent national authorities the instruments adopted by the Conference.

Verité, "Emerging Markets Research Project", Prepared for the California Public Employees Retirement System (CalPERS)[27]

Verité's[28] work on assessing State compliance with labour standards was the result of a request by the California Public Employees Retirement System, the largest pension fund in the United States, for the creation of a quantitative ranking system of twenty-seven emerging markets countries, to be used in investment decision-making. Since the publication of Verité's findings in 2001, the organisation has published year-end reports in 2002 and 2003, each time ranking countries according to the latest data and comparing its results to those of the previous year.

The substantive information is extracted from a wide spectrum of sources, both public and private. These include in-country interviews with key decision-makers in government, business, labour unions, non-governmental organisations; in-country research into labour conditions, government policies, and national laws and regulations; Verité's factory audits; and reports from governmental agencies, the International Labour Organisation, United Nations bodies, the World Bank, the International Monetary Fund, labour unions, businesses, and non-governmental organisations.

Verité's assessment examines country performance in five areas, namely, freedom of association, forced labour, child labour, non-discrimination,[29] and conditions of work – under the latter heading it examined health and safety, wages, hours of work, status of foreign contract labour, and the impact of export processing zones on labour conditions. For each of these five areas, the analysis seeks to measure: 1) whether the respective countries have ratified the relevant ILO Conventions (ratification status); 2) to what extent national laws are in conformity with ILO core Conventions (laws and legal system); 3) States' capacity to enforce labour standards, the existence of inspection mechanisms, the capacity of non-governmental organisations to function

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[27] Verité, "Emerging Markets Research Project", Prepared for the California Public Employees Retirement System (CalPERS), Amherst, Massachusetts, 2001. An abridged version of the paper entitled "Country-Level Assessments of Labour Conditions in Emerging Markets: An Approach for Institutional Investors" was prepared by Viederman, D. and Klett, E. for the ILO Seminar on Qualitative Indicators of Labour Standards and Workers Rights, Geneva, September 14-15, 2004.

[28] Verité is a non-profit, social auditing, research and training organisation based in Massachusetts, USA. The CalPERS project was initiated in 2000 when the California Employees Retirement System requested Veritè's contribution for assessing emerging markets countries for investment decision-making purposes.

[29] As indicated earlier, since the adoption of the 1998 Declaration of Fundamental Principles and Rights at Work, these four areas have been generally recognised as representing the core labour rights.

(institutional capacity); 4) the actual level of compliance (implementation effectiveness).[30] In the overall scoring/ranking, each of these four benchmarks is assigned a different weight, 10% the ratification status, 25% the legal system, 15% the institutional capacity, and 50% the implementation effectiveness. Each country is given a number of points, corresponding to its performance on each of these four points. A set of forty-two indicator questions covers all five areas, addressing for each one of them all four benchmarks indicated above.

State performance in freedom of association is assessed on the basis of twelve indicator questions covering ratification status (indicators 5 and 6, for Conventions 87 and 98 respectively), the legal system (indicators 9-15), and implementation effectiveness (indicators 29-31). Two more indicators (indicators 26 and 32) address the situation in export processing zones. The seven indicators assessing the countries' legal framework examine in particular the following points: the right of workers' organisations to draw up constitutions and rules, to freely elect their representatives, to organise their administration and activities, and to formulate their programs as defined in ILO Convention 87 (indicator 9); the right of workers' organisations to be free from governmental interference, including the right not to be dissolved or suspended by administrative authority (indicator 10); the right of workers' organisations to freely join international labour organisations (indicator 11); workers' protection against anti-union discrimination acts (indicator 12); workers' protection against acts of interference by employers (indicators 13); the existence of measures to promote free and voluntary collective bargaining (indicator 14); workers' right to strike (indicator 15). By the same token, for measuring implementation effectiveness, the analysis considers: the independence of trade unions (indicator 29); the existence of non-formal restrictions, that is, restrictions on workers' rights not envisaged in law but existent in practice (indicator 30); and the degree to which collective bargaining occurs without government interference (indicator 31). The findings from the analysis are presented in tables indicating for all twenty seven countries reviewed: 1) the overall rank, *i.e.* the compliance scores for each country on all core labour standards; 2) the category scores, that is, country scores for each one of the four benchmarks mentioned earlier; as well as 3) subcategory scores and percentages.

What is most impressive about Verite's work is the wide spectrum of sources on which it relied; they range from official reports by governments, inter- and non-governmental

[30] Each of these benchmarks was further divided into weighted subcategories.

organisations to factory audits, interviews and individual research. Nevertheless, the methodology for systematising and evaluating the substantive data remains opaque. In effect, it appears that the study fails to adequately meet the requirement for transparency.

Böhning, R., "Gaps in Basic Workers' Rights"

In his paper "Gaps in Basic Workers' Rights",[31] R. Böhning developed a sophisticated method for quantifying State compliance with basic workers' rights. Reflected in the title of the paper, the author's aim is to measure the divergence between working conditions prevailing in the various countries and the standards envisaged in ILO Conventions; in the words of the author "to conceptualise and measure numerically the gap between the real and the ideal world of basic workers' rights".[32]

In line with this notion, Böhning designates the two main indicators he introduces, the adherence and implementation indicators, as the Adherence and Implementation Gap respectively. The former, the adherence gap, looks at formal criteria, such as ratification of ILO Conventions embodying core labour rights,[33] observance of reporting obligations, number of complains filed, *etc*. In short, it examines the extent to which States fail to ratify the fundamental ILO Conventions and to fulfil certain formal requirements. The latter, the implementation gap, seeks to capture legislative or practical implementation problems, which have been identified and reported by the ILO supervisory bodies. It thus examines to what degree national laws and practices fall short from giving effect to the provisions of ILO instruments. Each component / dimension of the two main indicators is assigned a different numerical value, depending on its perceived importance, and a maximum number of points represents the maximum possible gap

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31 Böhning, R., "Gaps in Basic Workers' Rights", In Focus Program on Promoting the Declaration on Fundamental Principles and Rights at Work, International Labour Office, 2003.

32 *Ibid*, p. 1.

33 That is, the four sets of labour rights designated by the 1998 Declaration on Fundamental Principles and Rights at Work as fundamental or core, and which are embodied in the following ILO Conventions: Forced Labour Convention, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 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 Abolition of the Worst Forms of Child Labour Convention, 1998 (No. 182).

between the situation of workers' rights in a given county and the standard envisioned by ILO instruments.

The foregoing becomes clearer when one looks at the various components of the adherence and implementation indicators for freedom of association and collective bargaining. The adherence indicator has four dimensions; two linked to the core Conventions (ratification and fulfilment of reporting obligations), and two to the 1998 Declaration (fulfilment of reporting obligations and progress, *i.e.* allocation of resources, adoption of legislative measures and policies intended to realise the Declarations aims). By the same token, the implementation indicator, which seeks to capture problems in the application of ILO standards, quantifies the direct requests and observations of the Committee of Experts on the Application of Conventions and Recommendations and the requests to be kept informed and interim reports of the Committee on Freedom of Association. Each one of these components is given a different weight in the construction of the adherence and implementation gap.

With the necessary changes, the same formula is applied for measuring the adherence and implementation gaps regarding the prohibition of forced and child labour and non-discrimination in employment. Adherence and Implementation Gap combined for all core labour rights make up the Basic Workers' Rights Gap, the overall indicator.

The study covers the period between 1985 and 2002, also giving an indication of the trend in each country; hence, "smaller" indicated improvement, "growing" deterioration, while "no change" shows no significant variation in the adherence or implementation gaps. As regards the sources, the author relies exclusively on information provided by the International Labour Office and the ILO supervisory bodies.

The assessment model developed by Böhning is highly structured and indeed takes into account different factors, such as ratification rates, observance of formal requirements in respect of Conventions and the 1998 Declaration for freedom of association, the comments of the supervisory bodies, including the complaints filed with the Committee on Freedom of Association, countries' capacity to give effect to Conventions and ILO principles, including the capability to exercise authority over their territory, and the evolution in the application of workers' rights over time. At the same time, in an effort to eliminate the possibility for subjective judgment, the author adopts a strictly formalistic approach, which disregarded the content of the comments made by the supervisory bodies. In the words of the author: "Where the

nature of a direct request changes in the light of new information that has come to the Committee of Experts' attention, the charge on implementation will stay the same. It is the formal fact of making a direct request, not its contents, which matters. No judgment is involved on the part of the GAP system. Observations are scored by the mere fact of the Committee of Experts' report containing such a form of comment. […] If the content of an observation changes in the light of new information that has come to the Committee of Experts' attention, the charge on the indicator will stay the same."[34] As a result, the assessment fails to capture the qualitative difference between the various direct requests, observations, interim reports and requests to be kept informed. Differentiating between the comments made by the ILO supervisory bodies for the purpose of assessing the content of their observations while maintaining objectivity and avoiding arbitrary judgment is, indeed, a difficult task. Nonetheless, an observation made in connection to incidents of impunity for perpetrators of acts of violence against trade unionists or arbitrary arrest and detention of trade unionists can hardly be treated or scored in the same way as an observation made in relation to laws that make eligibility for trade union office conditional on trade union membership. There is a qualitative difference between these two instances that must be captured by a system seeking to assess State compliance with core labour rights.

Kucera, D., "Measuring Trade Union Rights: A Country-Level Indicator Constructed from Coding Violations Recorded in Textual Sources"[35]

In his paper "Measuring Trade Union Rights: A Country-Level Indicator Constructed from Coding Violations Recorded in Textual Sources", D. Kucera introduces a method for constructing a country-level indicator of trade union rights to be used in econometric models of economic outcomes such as wages, foreign direct investment and international trade. In constructing the indicator, the author uses the information provided by the International Confederation of Free trade Unions Annual Survey of Violations of Trade Union Rights, the United States State Department's Country Reports on Human Rights Practices, and the ILO Committee on Freedom of Association Reports.

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[34] Böhning, *op. cit.* (note 31), pp. 27-28.

[35] Kucera, D., "Measuring Trade Union Rights: A Country-Level Indicator Constructed from Coding Violations Recorded in Textual Sources", Working Paper No. 50, International Labour Office, Geneva, 2004.

The discussion paper comprises five parts supplemented by a number of tables, figures and appendices. Part one, the introduction, sketches out the purpose and content of the paper, while identifying the incompleteness of existing information sources, especially in applying consistent evaluation criteria across countries and over time, as the primary difficulty in developing more definite qualitative indicators of labour standards and workers' rights.

Part two focuses on the method used for constructing the indicator. This includes 1) coding violations of trade union rights recorded in the three sources mentioned above and 2) turning the coded text into an indicator. The evaluation is made on the basis of thirty-seven weighted criteria –each evaluation criterion is assigned a weight with greater weights indicating more severe problems— which sought to capture both problems traced in the legislation and in the practice, putting more emphasis on the latter, in the period between 1993-1997. These cover freedom of association / collective bargaining and related civil liberties, the right to establish and join unions and workers' organisations, other union activities, the right to collective bargaining, the right to strike and export processing zones. A different letter is used for coding violations recorded in each of the three sources: violations recorded in the ICFTU Annual Survey were coded with an (a); those recorded in the State's Department reports with a (b); and those in the reports of the Committee on Freedom of Association with a (c). In addition, rules for particular kinds of violations, for mutual exclusivity as well as non-exclusivity are spelled out.

In part three, the author presents the most and least frequently observed violations and refers the reader to appended tables for the indicators on the hundred sixty-nine countries examined. Part four discusses the merits and caveats of the proposed method, explaining, in particular, how the analysis seeks to meet the criteria of definitional validity, variation, reproducibility, transparency, and also overcome the problem of evaluator bias, information bias and other problems with information sources.[36] The latter, *i.e.* shortcomings of existing information sources, is, according to the author, the main limitation of the method, given that "the existing sources do not consistently apply, by and large, a systematic and detailed definition of what constitutes trade union rights as well as violations of these rights either across countries or over time."[37]

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[36] These criteria for assessing the accuracy of qualitative indicators were proposed by K. Bollen and P. Paxton, "Subjective Measures of Liberal Democracy", Comparative Political Studies, Vol. 33, 2000, pp. 58-86.

[37] Kucera, *op. cit.* (note 35), p. 10.

In line with the foregoing, the last part of the paper underscores the need for improved information sources, *i.e.* sources that provide well-defined, consistent, detailed and clearly structured information. To that end, it proposes that the construction of indicators be more closely integrated with the collection of data and that a number of carefully designed questions be incorporated into labour force surveys.

The work of D. Kucera is a valuable contribution to the labour rights monitoring field. Although the paper does not contain country scores on freedom of association, the developed methodology has the potential of providing with such scores and rankings. Nonetheless, with regard to the assessment of the severity of the various violations recorded in the sources, it is questionable whether one can consider the dissolution or suspension of unions by the administrative authorities or the exclusion of certain categories of workers from the right to organise as severe a problem as instances of impunity for murder or disappearance of trade unionists.[38]

3. The Reports of the CEACR as a Source of Information of Freedom of Association Violations

As already shown in the previous chapter, each of the assessment schemes developed so far relies on a combination of different sources, such as the reports of government agencies, of intergovernmental organisations and of private actors. Some experts, while mindful of the limitations of each one of the existing information sources, consider it important to rely on several of them when constructing a system for the assessment of State compliance with freedom of association standards.[39] Others express a certain degree of scepticism as regards the use of

[38] *Ibid.*, p. 14.

[39] Compa, *op. cit.* (note 4), p. 41.

government agency reports as a source of objective information.[40] What is common, however, is that most analysts put emphasis on the information generated by the ILO supervisory bodies.

This is so for a number of reasons. Both in terms of legitimacy and competence, at the international level, the ILO Committee of Experts and the Committee on Freedom of Association[41] are the two most pertinent bodies to report on the implementation of labour standards in the various ILO member States. The CEACR, an independent body of prominent experts in the fields of labour law and industrial relations, is authorised to monitor the extent to which State Parties to ILO Conventions – namely, states that have ratified the relevant ILO Conventions— apply domestically the standards envisaged therein. It carries out its supervision at regular intervals on the basis of the reports submitted by State Parties themselves, and the comments made by workers' and employers' organisations (Articles 22 and 23, ILO Constitution). Although not empowered to interpret ILO Conventions, the CEACR has often assumed an interpretative role, shedding light into complex questions concerning the interpretation of the provisions of ILO Conventions.[42] This has resulted to a comprehensive and coherent body of case law, to which also the CFA adheres, whenever it is confronted with questions of a technical nature.

The Committee on Freedom of Association, a tripartite organ composed from among the ranks of the ILO Governing Body, deals exclusively with complaints concerning violations of trade union rights, irrespective of whether the State, against which a representation or complaint

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[40] Swepston, L., "Indicators of Core Labour Standards: A Design in Progress", Hand-Out, Decent Work Forum: Using Indicators to Assess Compliance with International Labour Standards, International Labour Office, 20 October 2004, Geneva.

[41] Hereinafter also CFA.

[42] The CEACR is not a judicial body empowered to give authoritative interpretation of ILO Conventions, the only body bestowed with such competence being, in accordance with Article 37, paragraph 1, ILO Constitution, the International Court of Justice. On this issue, the Committee has reiterated a number of times that: "[I]n order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate", CEACR, *General Report*, ILC 77th Session, 1990, p. 8. In response to the objections raised regarding the Committee's interpretative function, the Committee has stated: "[I]nsofar as [the Committee's] views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised", noting that "the acceptance of the above considerations is indispensable for the maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation." CEACR, General Report, ILC 77th Session, 1990, p.8.

is brought, has ratified the respective ILO Conventions. It thus examines the implementation of ILO standards on an *ad hoc* basis.[43]

Both the CEACR and the CFA have a long-standing record in monitoring the implementation of international labour standards.[44] This has enabled the supervisory bodies to follow the evolution in the implementation of labour standards in the various member States in a continuous and uninterrupted fashion and has also provided the International Labour Office, the Organisation's secretariat, with a vast amount of information on economic and social rights. In addition, both the CEACR and the Committee on Freedom of Association conduct their work according to standard procedures; this, from a methodological viewpoint, renders the reports of the two bodies suitable for coding.

At the same time, however, one cannot lose sight of certain limitations of the information generated by the ILO supervisory mechanism. Especially with regard to the CEACR, the focus of the present analysis, it must be borne in mind that the Committee's assessment is made on the basis of reports submitted by governments, comments made by workers' and employers' organisations, reports from other bodies as well as other relevant information. This means that, for the most part, the Committee performs its examination on a documentary basis, a fact that sometimes raises reservations as to the accuracy and credibility of the information submitted.[45]

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[43] In the ILO supervisory system, the freedom of association procedure is a specialised procedure dealing exclusively with violations of trade union rights. The Committee on Freedom of Association is a tripartite body made up of members of the ILO Governing Body. Going beyond its originally narrow mandate, the Committee established its competence to examine in substance allegations of infringement of trade union rights, including representations and complaints concerning freedom of association, with a view to ascertaining the facts and making recommendations on the necessary measures to be taken by member States for the purpose of ensuring respect for freedom of association.

[44] With a Resolution adopted in 1926, the Conference requested the Governing Body "to appoint… a technical Committee of Experts… for the purpose of making the best and fullest use of [the information contained in the governments' reports] and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available." Resolution Concerning the Methods by Which the Conference Can Make Use of the Reports Submitted under Article 408 of the Treaty of Versailles, ILC, 8th Session, 1926, Record of Proceedings, I Vol., p. 429. In 1948, the Conference adopted a Resolution inviting the Governing Body to enter into consultation with the competent organs of the United Nations for the purpose of adopting machinery suitable to safeguard freedom of association. This led in 1950 to the establishment of a Fact-Finding and Conciliation Commission, which, although established as the main body, was surpassed by the Committee on Freedom of Association, which was established by the Governing Body the following year. Resolution Concerning International Machinery for Safeguarding Freedom of Association adopted on 9 July 1948, ILC, Record of Proceedings, 33d Session, Geneva, 1950, Annex I to Appendix XII, p. 567

[45] The ILO Standards Department has its own rules for deciding the credibility of the information coming from various sources. In the words of L. Swepston: "The information in the files has varying degrees of credibility, well known to the Standards Department but possibly less evident to others consulting the files. For instance, information received from NGO's is usable to the extent that is contains "hard" information –a new law or an extract from an

This is often amplified by the fact that governments do not respond at all or do not respond promptly to the Committee's questions and requests, as well as the fact that workers' and employers' organisation do not always make use of their right to comment on government reports. When a member-State fails to submit reports, in most cases the Committee refrain from making any substantive finding and reiterates its previous questions and requests. Similarly, in the absence of updated information, the Committee recalls its previous observations and calls upon the government in question to submit all necessary information. In cases where it has available to it information from sources other than the government in question, for example organisations of workers' or employers', non-governmental organisations or other international bodies, the Committee normally communicates that information to the respective government and requests it to either confirm or refute it, or provide additional clarification. The Committee's long-standing record of monitoring the enforcement of international labour standards in the various ILO members States allows it to have a comprehensive account of the particular difficulties facing different State Parties in the application of ILO Conventions and hence to accurately appreciate the available information. This short description shows that, although the system functions more efficiently when governments cooperate, there are yet other mechanisms, which enable the Committee to follow the developments in member States that do not fulfil their reporting obligations. In effect, it is possible that the system does not always provide every piece of information that is relevant to the issues under examination in the timeliest fashion but it is very unlikely that it provides inaccurate information.

It follows from the above, that, notwithstanding the described caveats, the ILO supervisory bodies remain by virtue of their composition, mandate and working methods the most competent institutions in the field of labour rights, and thus are, more than any other international body, in a position to give guarantees of objectivity and accuracy in their assessment of national labour laws and practices in the various ILO member States.

As noted already, the current paper focuses on the CEACR country reports on Conventions 87 and 98 and does not consider the information contained in the reports of the Committee on Freedom of Association. As already indicated earlier, while the CEACR carries

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official report—but allegations and other information are not directly receivable". Swepston, L., *op. cit.* (note 37), p. 3.

out a technical examination for the purpose of assessing the extent to which governments comply with the requirements of ratified Conventions on a regular and uniform fashion for all State Parties, the Committee on Freedom of Association does not conduct regular supervision of State compliance with the ILO standards but only deals with instances of violations brought to its attention by the ILO Governing Body, governments or organisations of workers and employers. In practice, this means that whether certain trade union rights violations come before the Freedom of Association Committee depends very much on the resources and willingness of governments and workers' and employers' organisations in all parts of the world. As opposed to this "complaint-driven" procedure,[46] the regular supervision undertaken by the committee of Experts brings to the fore instances of violations by governments bound to respect the standards of Conventions 87 and 98 anywhere in the world, and irrespective of whether other governments or workers' and employers' associations take action.

There is no doubt that the CEACR reports are not the only source of information on violations of freedom of association and collective bargaining, not least because, as indicated earlier, these reports are only available for countries that have ratified the relevant ILO Conventions. Confining oneself to the reports of the CEACR at this stage serves purely methodological purposes, and is not to be construed as discounting the importance of the reports of the Freedom of Association Committee – or, possibly, other sources – as a valuable information source concerning State compliance with freedom of association, or as discarding further research into the possibility of developing a methodology –or using one of the presently existing methodologies– for coding the information in the reports of the CFA.

Alongside the CEACR reports, this study also makes use of the information maintained by the Standards Department of the International Labour Office, when required, by drawing on supplementary sources, *i.e.* sources that help shed light on the information of the CEACR reports, clarify points of ambiguity, and provide further explication on issues not sufficiently dealt with by the Committee in its reports. These supplementary sources are: NATLEX (the ILO database of national labour law), the International Observatory of Labour Law (an ILO site that provides various information on national and international labour law), and the archive of country files maintained by the ILO International Labour Standards Department. Additionally, recourse has sometimes been made to the legal expertise of the International Labour Standards Department.

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[46] Compa, *op. cit.* (note 4), p. 40.

4. Analytical Grid

The process of developing a methodology for coding the information contained in the CEACR reports on Conventions 87 and 98 entails the following: (i) drawing up clearly defined criteria according to which the information contained in the CEACR reports shall be classified and (ii) formulating a set of rules according to which that information shall be coded. For purposes of clarity, it is proposed to use the term "key concepts" for the classification criteria and the term "coding rules" to refer to the rules according to which the information shall be coded.

4.1. Drawing Up the Key Concepts

The criteria, according to which the information contained in the CEACR reports shall be coded are drawn from the provisions of the Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87) and the Right to Organise and Collective Bargaining Convention (ILO No. 98), as these have been interpreted by the main ILO supervisory bodies,[47] *i.e.* the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association. For the purposes of the present analysis these criteria are referred to as "key concepts".

Before turning to the established criteria, a brief mention should be made to the choice of instruments from which the key concepts were drawn. Conventions 87 and 98 are recognised as the two fundamental ILO standard-setting instruments as regards workers' and employers' freedom of association. They are included among the so-called priority Conventions, *i.e.* most important ILO Conventions on the implementation of which governments are requested to submit reports every two years. This is due to the fact that they regulate workers' and employers'

[47] On the interpretation of Conventions 87 and 98 see: "Freedom of Association and Collective Bargaining. General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98)", International Labour Office, Geneva, 1994. For a summary of the case law of the Committee on Freedom of Association: "Freedom of Association. Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO", International Labour Office, Geneva, 1996.

freedom of association on a universal scale, as well as due to their general acceptance, which is reflected in the number of ratifications they have attained: 142 for the former, and 154 with respect to the latter. They complement one another in safeguarding workers ' and employers' freedom of association by way of ensuring trade union independence, both from government authorities and employers' associations, and also by way of requiring member States to take the necessary positive measures which will enable full realisation of the rights stipulated therein. Thus, they enumerate both the negative and positive obligations of member States with respect to workers' and employers' freedom of association. Although the rights enunciated in Conventions 87 and 98 are equally afforded to workers' and employers' organisations, this paper, and hence the methodology proposed here, focus on violations against workers and their organisations, also due to practical considerations, namely that the overwhelming number of freedom of association violations target workers and their organisations.

Other ILO Conventions that ensure freedom of association include: the Right of Association (Agriculture) Convention, 1921 (ILO No. 11), the Right of Association (Non-Metropolitan Territories), 1947 Convention (ILO No. 84), the Rural Workers' Organisations Convention, 1975 (ILO No. 141), the Labour Relations (Public Service) Convention, 1978 (ILO No. 151), and the Workers' Representatives Convention, 1971 (ILO No. 135). Compared to Conventions No. 87 and No. 98, these instruments are narrower in scope, either covering specific categories of workers or addressing only certain aspects of freedom of association. Furthermore, the Collective Bargaining Convention, 1981 (ILO No. 154), which admittedly regulates collective bargaining in a comprehensive manner, has so far attained only 35 ratifications, a relatively small number. Given that the present study introduces a methodology for coding CEACR reports, in which the conformity of national laws and practices is evaluated only in relation to the standards of ratified Conventions, the number of ratifications an instrument has attained is important. Taking the standards embodied in Convention No. 154 as a reference for developing a coding methodology would considerably limit the number of countries to which the methodology could apply and consequently decrease the potential usefulness of the proposal. For these reasons, in the present context, the methodology proposed is formulated on the basis of the standards set by Conventions 87 and 98.

The key concepts drawn up seek to address the issues dealt with in the two Conventions in an exhaustive manner. They cover the three major areas associated with freedom of

association, that is, the right to organise, the right to industrial action, and collective bargaining. The right to industrial action, although not explicitly stipulated in Convention 87, is generally accepted to form an integral part of its Article 3, *i.e.*, right of workers' and employers' organisations to organise their activities without interference by public authorities. This has been reiterated by the Committee of Experts on several occasions, and is thus a well-established principle. In addition to the three main areas, the established key concepts address the issue of anti-union discrimination and interference by employers in trade union affairs (Articles 1 and 2 Convention 98), as well as the linkage between freedom of association and fundamental civil liberties such as the right to life, freedom and security of person, the right to a fair trial and the right to protection of property and premises. Although none of the foregoing is laid down in either of the Conventions, it was early on recognised that a system of protection of the very fundamental human rights was a necessary prerequisite for the effective exercise of the rights stipulated in Conventions 87 and 98. The underlying idea is that freedom of association may not be fully realised unless there is effective protection of the rights to life and to freedom and security of person, *i.e.* the right for protection of one's life, the right not to be subjected to acts of physical or psychological violence, including physical assault, ill-treatment, forced disappearance, or to deprivation of personal freedom, through arbitrary arrest, detention or imprisonment. In the ILO context, effective protection of the right to freedom of security of person requires State authorities not to subject any person involved in trade union activities to the above described acts, and also to ensure through sufficiently deterrent sanctions and effective remedies that no trade unionist is subjected to any of the above by non-State actors. In addition, it requires States to ensure to everyone, including those involved in trade union activities, the right to a fair trial. Similarly, the right to protection of property and premises, although not envisaged in Conventions 87 and 98, was proclaimed by the International Labour Conference as essential for the independence of the trade union movement and the normal exercise of trade union rights.

A careful reading of the two Conventions, coupled with an analysis of the relevant case law, allows for the identification of 27 key concepts, divided into five main groups: **(1) Civil Liberties Pertinent for Freedom of Association**, in particular right to life and physical integrity, freedom and security of person and protection of property and premises as prerequisites for the exercise of trade union rights; (**2) Right to Establish Trade Unions and All Concomitant**

Rights; (3) Right to Industrial Action; (4) Anti-Union Discrimination and Interference in Trade Union Affairs; and (5) Collective Bargaining. Group 1, Civil Liberties Pertinent for Freedom of Association, includes the first three key concepts. Key concepts 1 and 2 deal specifically with the fundamental human rights to life, liberty and security of person, the former referring to States' obligation to take the necessary measures, preventive and remedial, to protect the life and physical integrity of trade unionists, and the latter to States' responsibility to ensure that members of the trade union movement are afforded guarantees of due process and fair trial. The right of trade unions to adequate protection of their property and to financial independence are addressed in key concept 3. The remaining 24 key concepts address issues more explicitly dealt with in the Conventions. Key concepts 4 to 12 deal with the various aspects of the Right to Establish Trade Unions and All Concomitant Rights (Group 2); concepts 13 to 17 deal with the Right to Industrial Action (Group 3); concepts 18, 19 and 20 deal with Anti-Union Discrimination Acts and Acts of Interference by Employers in Trade Union Affairs (Group 4); and concepts 21 to 27 lay down the principles governing Collective Bargaining (Group 5).[48] Each key concept is articulated in the form of a provision spelling out a standard embodied in Conventions 87 and 98. It is clearly not possible to incorporate in the key concepts the case law of the CEACR. Yet, going beyond the letter of the Conventions, the established key concepts seek to capture not merely the basic rules derived from the rights enunciated in the Conventions' provisions, but also to give information on their scope and permissible restrictions. This is believed to facilitate the task of coding since it allows one to identify the whole range of violations falling under the one or the other key concept.

Table No. 1 - List of Key Concepts

Group 1: Civil Liberties Pertinent for Freedom of Association

1 Right to life and physical integrity

All persons involved directly or indirectly in trade union activities shall be ensured adequate protection through sufficiently deterrent sanctions and effective remedies against all acts of violence, including murder, physical assault, forced disappearance and forced exile.

[48] Table No. 1 "List of Key Concepts" presents the 27 key concepts.

2 Right to liberty and security of person / Right to a fair trial

Persons involved directly or indirectly in trade union activities may not be subject to arbitrary arrest, detention or imprisonment, or other restriction of the right to free movement, nor may they be denied the right to a fair trial by an independent and impartial tribunal.

3 Protection of property

Workers' organisations shall enjoy adequate protection of their right to property and independence in the administration of their finances. Trade union property and assets may not be subject to seizure without a judicial warrant.

Group 2: Right to Establish Trade Unions and All Concomitant Rights

4 Exclusion from the right to establish and join workers' organisations

All workers without distinction shall enjoy the right to establish and join workers' organisations.
(Note: The extent to which the right to establish trade unions and all concomitant rights shall apply to the armed forces and police personnel shall be determined by national laws).

5 Trade union pluralism

Legislation shall not impede trade union pluralism. The direct or indirect imposition by law of a system of trade union monopoly is in breach of Convention No. 87.

6 Approval and registration of workers' organisations

The approval and registration of workers' organisations shall not be subject to excessive formalities and restrictive conditions, nor to prior authorisation by public authorities. Any decision refusing the approval and registration of a worker's organisation shall be subject to judicial review.

7 Establishment of federations and confederations

First-level organisations shall have the right to establish and join federations and confederations of their own choosing, and to affiliate with international organisations of workers and employers. The establishment and registration of federations and confederations shall not be subject to overly restrictive conditions. Federations and confederations shall enjoy the same rights as first-level organisations.

8 Dissolution or suspension of workers' organisations

Workers' organisations shall not be liable to be dissolved or suspended by administrative authority. Any decision ordering the dissolution or suspension of an occupational organisation shall be subject to judicial review.

9 Approval and registration of Constitutions and by-laws

Workers' organisations shall have the right to draw up their constitutions and by-laws. The approval of an organisation's constitution and by-laws shall not be subject to overly restrictive conditions and excessive formalities, nor to prior authorisation by public authorities. Any decision refusing the approval of an organisation's constitution or by-laws shall be subject to judicial review.

10 Election of representatives / Eligibility criteria

Workers' organisations shall have the right to elect their representatives in full freedom. Eligibility for trade union office shall not be subject to occupational, membership or nationality criteria at least for a reasonable proportion of union representatives. The judiciary shall be the sole authority competent to supervise electoral procedures and pronounce on their legality.

11 Administrative independence

Workers' organisations shall enjoy independence in the administration of their internal affairs. The authorities' powers of supervision shall be limited to verifying that the law and the organisations' rules are respected and shall be subject to judicial review.

12 Organisation of activities

Workers' organisations shall be free to organise their activities and formulate their programs without interference by public authorities. Restrictions on the freedom of assembly, demonstration, expression and opinion may not be imposed unless absolutely necessary for the maintenance of public order.

Group 3: Right to Strike

13 Restrictions on the right to industrial action / Definition of essential services

The right to industrial action may not be restricted except in cases of an acute national crisis, for workers in the essential services in the strict sense of the term and public servants exercising authority in the name of the State.

(Note: Taking into account the special circumstances in the various States Parties to the Convention, national laws shall designate as essential services only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

14 Conditions for lawful industrial action

The conditions, which the law requires to be observed in order for industrial action to be lawful, shall not amount to a de facto prohibition of the right to industrial action or to an excessive limitation of its exercise. The judiciary shall be the sole authority competent to pronounce on the legality of a given action.

15 Minimum service

The provision for a minimum service as an alternative to a total prohibition of industrial action for workers in the essential services shall be accompanied by the guarantees that it remains minimum, *i.e.* limited to the operations absolutely necessary to meet the needs of the population, and that workers organisations are able to participate in defining the service, or, failing agreement between the Parties, the task of defining the service is entrusted to an independent body.

16 Compulsory arbitration in the context of industrial action

Compulsory arbitration to end a strike may not be imposed save in the case of disputes involving public servants exercising authority in the name of the State or workers in essential services.

17 Penalties for instigation of, or participation in, industrial action

Workers and their organisations shall not be subjected to fines or imprisonment, nor shall they be liable for damages in respect of industrial action which conforms to international standards.

Group 4: Anti-Union Discrimination Acts and Acts of Interference by Employers in Trade Union Affairs

18 Anti-union discrimination

Legislation shall ensure adequate protection, through sufficiently dissuasive sanctions, against all acts of discrimination at the time of recruitment, during employment and at dismissal for membership or participation in trade union activities.

19 Acts of interference

Legislation shall ensure adequate protection, through sufficiently dissuasive sanctions, against all acts of interference by employers and their organisations in the establishment, functioning and administration of trade unions and vice versa.

20 Solidarist associations

Solidarist or other organisations set up by both employers and workers for purposes of economic and social welfare may not be treated more favourably than trade unions and shall be prohibited from exercising the rights pertaining to trade unions, in particular the right to collective bargaining by means of direct settlements between employers and non-unionised workers.

Group 5: Collective Bargaining

21 Promotion of free and voluntary collective bargaining

Governments should take all necessary measures to encourage and promote free and voluntary collective bargaining.

22 Exclusion from the right to collective bargaining

All workers without distinction shall enjoy the right to free and voluntary collective bargaining.
(Note: Convention No. 98 does not determine the position of public servants exercising authority in the name of the State, nor that of the armed forces and police personnel).

23 Designation of the bargaining partner / Most representative trade union

The right of workers' organisations to collective bargaining shall not be subject to excessive requirements. The most representative organisation at each level may be granted preferential or exclusive rights, provided that the designation is made according to objective and pre-established criteria.

24 Level and scope of collective bargaining

The Parties to collective bargaining shall have the right to freely determine the level at which collective bargaining shall take place and the sectors to be covered.

25 Negotiable issues and substantive outcomes of collective bargaining / Permissible restrictions

The Parties to collective bargaining shall have the right to determine the negotiable issues and substantive outcomes of collective bargaining. In cases where imperative economic stabilisation policies require the imposition of restrictions, governments should ensure that these remain exceptional and proportional and that the living standard of those mostly affected is protected.

26 Approval and registration of collective agreements

The approval or registration of collective agreements may not be refused save on grounds of form or where their terms do not conform to the minimum standards set out in labour law. Any decision refusing the approval or registration of a collective agreement shall be subject to judicial review.

27 Compulsory arbitration in the context of collective bargaining

Compulsory arbitration should not be imposed on the Parties to collective bargaining, except in cases of disputes in public and essential services in the strict sense of the term, to break a deadlock after protracted and fruitless negotiations, or at the initiative of workers' organisations for the conclusion of a first collective agreement.

4.2. Coding Scheme

4.2.1. The Working Methods of the CEACR

Before detailing the coding rules, it is useful to briefly present the *modus operandi* of the CEACR. It is thought that an insight into the Committee's working methods enables better understanding of the established coding rules and their *rationale*.

In addition to being the main system for the supervision of labour standard enforcement, the CEACR reporting machinery is an important channel of communication and exchange of information between governments and the Organisation on the progress made by the former in the implementation of international standards. As already indicated, for its reports, the Committee of Experts receives its information from the reports submitted to it by the respective governments, workers' and employers' organisations –according to Articles 22 and 23, ILO Constitution, governments are under an obligation to also send these reports to those organisations of workers and employers recognised as the most representative in their respective countries— and other intergovernmental and non-governmental bodies.

According to its established practice, in its reports, the Committee draws attention to discrepancies between national laws or practices and the standards embodied in the ILO Conventions and requests governments to introduce the necessary measures to bring their law and practice in line with the requirements of these instruments. The Committee also notes cases of progress, such as the introduction of laws and practices which conform to international labour standards, as well as cases of regression, such as the introduction of measures that broaden the divergence between national and international standards. Its findings are publicised in the form of individual observations for discrepancies of a more salient character, and direct requests for non-persistent discrepancies, or issues of a rather technical nature. In most cases, the Committee's comments set in motion a dialogue between governments and the Committee, which enables the latter to follow closely the progress made in relation to observed discrepancies.

Most times, when ascertaining the existence of a violation, the Committee also requests the Government to provide additional information in respect of the observed violation –including the relevant legislative or other texts— for the purpose of determining the nature and scope of a violation, inquiring about changes of law or practice at the national level or simply verifying the

correctness of its findings. However, in cases where the Committee does not have at its disposal irrefutable information which would allow it to determine whether national policies are in line with ILO standards, it refrains from making conclusive judgments, and, instead, requests governments to either reply to a specific question or to submit in their subsequent reports additional information and often also the texts of the relevant laws and statutes. Sometimes, the Committee's requests for information take comments made by workers' organisations as their point of departure. In such cases, the Committee usually pronounces on the matter at hand after having received the government's reply, also taking into account any other relevant information it has at its disposal. In the event that the government concerned fails to respond to the points raised by the Committee, the Committee reiterates its requests, unless convinced that the issue does not any more involve a violation of ILO standards.

4.2.2. Coding Rules Dealing with Substantive Issues

In line with the practice followed by the Committee of Experts, as illustrated in the preceding title, the present analysis identifies in the Committee's reports the discrepancies between national law and Conventions 87 and 98 for the purpose of coding them as instances of non-compliance.[49] In other words, an instance of non-compliance is a recorded by the Committee of Experts violation by a State Party of any of the standards embodied in Conventions 87 and 98.

As already shown, the 27 established key concepts represent the pre-selected categories according to which the various instances of non-compliance shall be classified. A careful reading of the key concepts reveals that consistent effort was made to establish concepts as much as possible mutually exclusive. The underlying idea is that the substance of each key concept shall be clearly discernible so that it is clear to what key concept a violation corresponds and also that the possibility of overlaps is, if not ruled out, at least minimised. Nonetheless, certain linkages between the different key concepts remain. Thus, with a view to ensuring consistency, it is necessary to identify these linkages and explain how to code instances of non-compliance, the subject matter of which appears to correspond to more than one key concept. However, the

[49] The term "instance of non-compliance" is used to denote a violation, a divergence, a discrepancy, a breach, an infringement, *etc.* All these terms are used interchangeably.

current heading deals only with questions of substance and hence questions of a more technical nature, such as whether and in what circumstances an instance of non-compliance may fall under more than one key concept, are addressed in the following title.

In chapter 4.1., it is stated that Civil Liberties Pertinent for Freedom of Association are addressed in Group 1, key concepts 1 to 3. Yet, key concepts 1 to 3 do not exhaustively deal with the question of pertinent civil liberties, since they only address the right to life and physical integrity, the right to security, liberty of person, the right to a fair trial and the right to protection of property. For the purposes of this analysis, other civil liberties pertinent to freedom of association for trade union purposes, such as freedom of assembly and demonstration, freedom of opinion, expression and dissemination of information are considered as part of the right of trade unions to organise their activities without interference by public authorities, and are thus addressed in key concept 12, Organisation of activities, Group 2, Right to Establish Trade Unions and All Concomitant Rights.

In addition to addressing violations that entail the imposition or maintenance of a system of trade union monopoly, key concept 5, Trade union pluralism, deals with violations that hinder the development of trade union pluralism indirectly, *inter alia*, the imposition by law of a system of compulsory trade union membership and the differentiated treatment of trade unions. The content of key concept 6, Establishment and registration of workers' organisations is closely linked to that of key concept 9, Approval and registration of Constitutions and by-laws, not least because very often the approval of an organisation's constitutive instrument is a prerequisite for the establishment of the organisation. Hence, it would be possible to treat both issues under a common title. Nonetheless, because of the diversity of existent laws and regulations on the matter the two questions are treated separately. Thus, all instances of non-compliance that relate specifically to the approval and registration of Constitutions and by-laws are dealt with in key concept 9, Approval and registration of Constitutions and by-laws, and by implication, all violations that do not specifically involve the approval and registration of Constitutions and by-laws, fall under key concept 6, Establishment and registration of workers' organisations.

Another interrelation is that between key concept 13, Restrictions on the right to industrial action, and key concept 14, Conditions for lawful industrial action. This becomes evident in those instances where the Committee treats the imposition of excessive conditions on the right to strike as a restriction on its exercise. This paper proposes that all restrictions referring to the type

of industrial action and all restrictions *rationae personae*, that is, restrictions imposed on certain groups or categories of workers, *rationae temporis*, that is, restrictions on the duration of industrial action and *rationae loci*, *i.e.* restrictions on the geographical scope of industrial action are addressed in concept 13, Restrictions on the right to industrial action. Other violations to be treated under concept 13 include those, which, with no other specification are dubbed as detrimental to the public order, the general interest, or the economic development of the country, those involving the replacement of strikers or of trade union executive committees that instigate strike action, as well as those referring to the determination of essential services. Instances of non-compliance, which are termed as prerequisites for lawful industrial action, fall under key concept 14, Conditions for lawful industrial action.

A question of overlap may also arise in respect of the prohibition of acts of interference by employers in trade union affairs, hence, between key concept 19, Acts of interference, and key concept 20, Solidarist associations. The establishment of solidarist or other organisations for purposes of economic and social welfare is a very common phenomenon in Latin American countries, and is often used as a pretext for employer involvement in trade union affairs. Under the scheme developed here, all instances of non-compliance that relate to the establishment and functioning of organisations set up by both employers and workers for purposes of economic and social welfare fall under concept 20, Solidarist associations, whatever their particular designation.

Key concept 21, Promotion of free and voluntary collective bargaining, addresses practices that obstruct the development of free and voluntary collective bargaining, as well as States' failure to establish machinery, *i.e.* bodies and procedures appropriate to national conditions to support the development of collective bargaining.

With a view to ensuring consistency, the following table (Table No. 2) lists the various violations, *i.e.* instances of non-compliance that the authors came across during the process of coding the CEACR reports on eleven countries. What is, nonetheless, important, is that it does so by assigning each recorded instance of non-compliance to the corresponding key concept. It is thought to be comprehensive but not exhaustive. It is believed that the coding of additional countries would reveal further examples of possible violations. Still it is regarded as a useful tool not only because it provides a model for the coding of the violations recorded so far, but also because, by detailing the violations that correspond to each one of the 27 key concepts, it offers guidance as to how new instances of non-compliance should be coded.

Table No. 2 - Examples of Possible Violations (Instances of Non-Compliance) of the Key Concepts

Key Concepts	Examples of Possible Violations (Instances of Non-Compliance)
Convention No. 87	
Group 1: Civil Liberties Pertinent for Freedom of Association	
1 Right to life and physical integrity All persons involved directly or indirectly in trade union activities shall be ensured adequate protection through sufficiently deterrent sanctions and effective remedies against all acts of violence, including murder, physical assault, forced disappearance and forced exile.	
2 Right to liberty and security of person / Right to a fair trial Persons involved directly or indirectly in trade union activities may not be subject to arbitrary arrest, detention or imprisonment, or other restriction of the right to free movement, nor may they be denied the right to a fair trial by an independent and impartial tribunal.	
3 Protection of property/Financial indepedence Workers' organisations shall enjoy adequate protection of their right to property and independence in the administration of their finances. Trade union property and assets may not be subject to seizure without a judicial warrant.	▪ Legislation affords the administrative authorities the power to confiscate trade union property and assets without a judicial warrant. ▪ Legislation affords the administrative authorities the power to freeze trade union accounts without a judicial warrant. ▪ Legislation does not provide for the right to appeal against any decision ordering the confiscation of trade union property and assets or the freeze of trade union accounts. ▪ Legislation determines the allocation of trade union dues/workers' contributions. ▪ Legislation makes the payment of union dues compulsory for all or certain categories of workers. ▪ Legislation forbids trade unions from receiving financial assistance. ▪ Legislation requires trade unions to obtain authorisation by the administrative authorities prior to carrying out financial transactions or receiving financial assistance. The obligation to obtain authorisation can be given effect through the imposition of penalties for failure to report the foregoing. ▪ Legislation regulates in great detail the rules of financial conduct of trade unions. ▪ Legislation requires trade unions to report on their financial and other activities at unduly frequent intervals.

Group 2: Right to Establish Trade Unions and All Concomitant Rights

4 Exclusion from the right to establish and join workers' organisations All workers without distinction shall enjoy the right to establish and join workers' organisations. (Note: The extent to which the right to establish trade unions and all concomitant rights shall apply to the armed forces and police personnel shall be determined by national laws).	▪ Exclusion or prohibition of certain categories of workers from the right to establish trade unions or exclusion from trade union membership (e.g. public servants, rural workers, executive or managerial staff, prison staff, fire service personnel, medical personnel, independent contractors, domestic workers, seafarers, *etc*.). ▪ Exclusion or prohibition of workers on account of race, nationality, political affiliation, sex, marital status, or age. ▪ Exclusion or prohibition of workers in exports processing zones. ▪ Exclusion or prohibition of workers in an enterprise or group of enterprises. ▪ Exclusion or prohibition of workers in a designated region. ▪ Loss of, or exclusion from, trade union membership due to a conviction for a minor offence. ▪ Loss of, or exclusion from, trade union membership due to failure to comply with obligations prescribed by law (absence from general assembly sessions, failure to pay union dues, non-exercise of union activities, *etc*.). ▪ Legislation bans workers engaged in more than one profession from joining more than one trade union.
5 Trade union pluralism Legislation shall not impede trade union pluralism. The direct or indirect imposition by law of a system of trade union monopoly is in breach of Convention No. 87.	▪ Direct imposition of a system of trade union monopoly: Legislation prohibits the establishment of more than one trade union at a given level or a given geographical area. ▪ Direct imposition of a system of trade union monopoly: Legislation prohibits the establishment of trade unions outside the existing trade union system. ▪ Indirect imposition of a system of trade union monopoly: Legislation maintains/preserves the established pre-eminence of certain trade unions. ▪ Indirect imposition of a system of trade union monopoly: Legislation differentiates between trade unions, affording privileges that go beyond those legally afforded to the most representative union only to some trade unions (right to collective bargaining, appointment of delegates to international bodies, consultation with the authorities). ▪ Indirect obstruction of a system of trade union pluralism: The law makes trade union membership compulsory for all or certain categories of workers. ▪ Indirect obstruction of a system of trade union pluralism: The law deprives workers' organisations that have not as yet acquired trade union status from all preliminary rights and functions, which could allow them to meet the establishment or

	registration requirements (registering members, collecting union dues, *etc.*).
6 Establishment and registration of workers' organisations The establishment and registration of workers' organisations shall not be subject to excessive formalities and restrictive conditions, nor to prior authorisation by public authorities. Any decision refusing the approval and registration of a worker's organisation shall be subject to judicial review.	▪ Legislation affords the administrative authorities the right to refuse the approval or registration of a trade union on grounds other than errors of pure form. ▪ Legislation does not provide for the right of judicial appeal against a decision refusing the approval or registration of a trade union. ▪ The law does not stipulate a specific time limit within which the authorities shall approve the establishment and registration of a trade union. ▪ The procedure leading to the approval and registration of a trade union is excessively complex and lengthy. ▪ Legislation places an excessive numerical limit for the approval and registration of a trade union, (for examples it imposes that the union enjoy the support of 50 or 30 per cent of the total number of workers employed in the establishment or group of establishments where it is formed).
7 Establishment of federations and confederations First-level organisations shall have the right to establish and join federations and confederations of their own choosing, and to affiliate with international organisations of workers and employers. The establishment and registration of federations and confederations shall not be subject to overly restrictive conditions. Federations and confederations shall enjoy the same rights as first-level organisations.	▪ Legislation prohibits certain workers' organizations (e.g. unions of public servants, agricultural workers, executive or managerial staff, fire service personnel, medical personnel, independent contractors, domestic workers, seafarers, etc.) from establishing or joining federations or confederations of their own choosing. ▪ Legislation authorizes the establishment of only one federation or confederation of workers per branch/occupation. ▪ Legislation requires an excessively large minimum number of first-level organizations for the establishment of federations of confederations. ▪ Legislation imposes excessive requirements for joining international federations of workers. ▪ Legislation imposes excessive requirements for the appointment of delegates to international bodies.

8 Dissolution or suspension of workers' organisations Workers' organisations shall not be liable to be dissolved or suspended by administrative authority. Any decision ordering the dissolution or suspension of an occupational organisation shall be subject to judicial review.	▪ Legislation allows for the dissolution of a trade union by an administrative decision, which is not subject to judicial review. The dissolution of a trade union can be given effect, *inter alia*, through the right of the administrative authorities to: a) cancel the approval, registration or legal personality of a trade union; b) revoke the approval, registration or legal personality of a trade union; c) suspend the operation of a trade union; d) deprive a trade union from all the rights and means necessary for carrying out its activities.
9 Approval and registration of Constitutions and by-laws Workers' organisations shall have the right to draw up their constitutions and by-laws. The approval of an organisation's constitution and by-laws shall not be subject to overly restrictive conditions and excessive formalities, nor to prior authorisation by public authorities. Any decision refusing the approval of an organisation's constitution or by-laws shall be subject to judicial review.	▪ The law does not provide for the right of judicial appeal against a decision refusing the approval or registration of the Constitution and by-laws of a trade union. ▪ The law does not stipulate a specific time limit within which the authorities shall approve the Constitution and by-laws of a trade union. ▪ The procedure leading to the approval and registration of the Constitution and by-laws of a trade union is excessively complex.
10 Election of representatives / Eligibility criteria Workers' organisations shall have the right to elect their representatives in full freedom. Eligibility for trade union office shall not be subject to occupational, membership or nationality criteria at least for a reasonable proportion of union representatives. The judiciary shall be the sole authority competent to supervise electoral procedures and pronounce on their legality.	▪ Legislation affords the administrative authorities the power to supervise trade union elections. ▪ Legislation allows for the loss of, or exclusion from, the right to hold trade union office due to a conviction for minor offences. ▪ The law makes eligibility for trade union office entirely conditional on trade union membership. ▪ Legislation excludes foreign nationals from the right to hold trade union office. ▪ Legislation regulates in great detail the manner in which trade union elections shall take place.
11 Administrative independence Workers' organisations shall enjoy independence in the administration of their internal affairs. The authorities' powers of supervision shall be limited to verifying that the law and the organisations' rules are respected and shall be subject to judicial review.	▪ The powers of the administrative authorities to supervise internal trade union affairs, *i.e.* to enter and inspect trade union premises, to inspect documents, *etc.*, are not subject to judicial review. ▪ The administrative authorities are granted the power to supervise trade union affairs, *i.e.* enter and inspect trade union premises, documents, *etc.* at excessively frequent intervals.

12 Organisation of activities Workers' organisations shall be free to organise their activities and formulate their programs without interference by public authorities. Restrictions on the freedom of assembly, demonstration, expression and opinion may not be imposed unless absolutely necessary for the maintenance of public order.	▪ Legislation prohibits trade unions from exercising the freedom of assembly, including the right to hold meetings. ▪ Legislation prohibits trade unions from organising demonstrations. ▪ Legislation prohibits trade unions from exercising freedom of expression and opinion, including the right to disseminate information. ▪ Legislation prohibits trade unions from publicly expressing their views on matters of economic and social policy. ▪ Legislation imposes on trade unions duties extraneous/irrelevant to their role as occupational organizations (e.g. the enforcement of labour discipline).

Group 3: Right to Industrial Action

13 Restrictions on the right to industrial action The right to industrial action may not be prohibited or restricted except in cases of an acute national crisis, for workers in the essential services in the strict sense of the term and public servants exercising authority in the name of the State. (Note: Taking into account the special circumstances in the various States Parties to the Convention, national laws shall designate as essential only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).	▪ Legislation allows for a general prohibition of the right to industrial action in cases other than genuine crisis situations (conflict, insurrection, natural disaster, *etc*.). ▪ Legislation empowers the authorities to prohibit industrial action, when, with no other specification, this is dubbed by the law as detrimental to public order, the general interest, or the economic development of the country. ▪ Legislation prohibits/excludes from the right to industrial action groups of workers other than those employed in services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. ▪ Legislation prohibits/excludes from the right to industrial action of civil servants in the broad sense of the term. ▪ Prohibiting strike action in the essential services, the legislation determines as essential services, services, the interruption of which does not endanger the life, personal safety or health of the whole or part of the population. ▪ Prohibiting strike action in the essential services, the legislation designates as essential all public utility services. ▪ Legislation imposes restrictions on the right to industrial action of groups of workers other than those employed in services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. ▪ Legislation imposes restrictions on the right to industrial action of civil servants in the broad sense of the term. ▪ Legislation stipulates the maximum permissible duration of industrial action.

- Legislation authorises the removal of trade union executive committees that have instigated industrial action.
- Legislation allows for the extensive use of permanent striker replacement.
- Imposing restrictions on strike action in the essential services, the legislation determines as essential services, services, the interruption of which does not endanger the life, personal safety or health of the whole or part of the population.
- Imposing restrictions on strike action in the essential services, the legislation designates as essential all public utility services.

14 Conditions for lawful industrial action

The conditions, which the law requires to be observed in order for industrial action to be lawful, shall not amount to a de facto prohibition of the right to industrial action or to an excessive limitation of its exercise. The judiciary shall be the sole authority competent to pronounce on the legality of a given action.

- The law affords the administrative authorities the power to declare a strike action illegal without providing for the right of judicial appeal against any such decision.
- The law requires strike action to be notified by a collective bargaining agent.
- The law requires the notification of strike action to specify the duration thereof, threatening with penalties the failure to observe the notified duration.
- The law requires strike action to be authorised by higher-level organisations.
- The law requires strike action to be approved by such a large number of the members in the establishment or group of establishments in which it is called that the exercise of the right to strike becomes very difficult or almost impossible.
- The law stipulates an excessively long period of advance notice for strike action.

15 Minimum service

The provision for a minimum service as an alternative to a total prohibition of industrial action for workers in the essential services shall be accompanied by the guarantee that it remains minimum, *i.e.* limited to the operations absolutely necessary to meet the needs of the population, and that workers' organisations are able to participate in defining the service, or, failing agreement between the Parties, the task of defining the service is entrusted to an independent body.

- Legislation affords the executive the power to define/determine the minimum service to be maintained during strikes in the essential services.
- The law affords the administrative authorities the power to define/determine the minimum service but provides for the right of judicial appeal against any such decision.
- Legislation affords the executive the power to define the minimum service to be maintained during strikes in the essential services, in the event that the Parties fail to reach an agreement.

16 Compulsory arbitration in the context of industrial action Compulsory arbitration to end a strike may not be imposed save in the case of disputes involving public servants exercising authority in the name of the State or workers in essential services.	▪ Legislation allows for the imposition of compulsory arbitration for the settlement of collective labour disputes in services other than the public and essential services in the strict sense. ▪ Legislation allows for the imposition of compulsory arbitration for the settlement of collective labour disputes in services other than the public and essential services in the strict sense at the request of one of the Parties.
17 Penalties for instigation of, or participation in, industrial action Workers and their organisations shall not be subjected to fines or imprisonment, nor shall they be liable for damages in respect of industrial action which conforms to international standards.	▪ The law imposes the penalty of imprisonment or heavy fines for instigation of, or participation in, peaceful industrial action, which, although at variance with the requirements laid down in domestic law, is not unlawful according to international standards.

Convention No. 98

Group 4: Anti-Union Discrimination Acts and Acts of Interference by Employers in Trade Union Affairs

19 Acts of interference Legislation shall ensure adequate protection, through sufficiently dissuasive sanctions, against all acts of interference by employers and their organisations in the establishment, functioning and administration of trade unions and vice versa.	▪ Legislation does not explicitly provide for the right of appeal against acts of interference in trade union affairs. Acts of interference in trade union affairs include activities aimed at exercising control over a trade union or preventing workers to join together in trade unions, the favouring of one trade union to the detriment of others, the establishment of executive committees controlled by the management, the carrying out of trade union activities by employers or their organisations, *etc*. ▪ Legislation does not explicitly provide for the establishment of bodies and procedures for the examination of complaints concerning acts of interference by employers in trade union affairs. ▪ Legislation does not explicitly provide adequate remedies for acts of interference by employers in trade union affairs. ▪ Legislation does not explicitly provide sufficiently deterrent penalties for acts of interference by employers in trade union affairs. Sufficiently deterrent penalties include heavy fines and imprisonment. ▪ Legislation does not stipulate strict time limits within which complaints concerning acts of interference by employers in trade union affairs shall be decided by the competent authorities. ▪ Legislation does not stipulate strict time limits within which the decisions handed down by the bodies competent to decide complaints concerning acts of interference by employers in trade union affairs shall be enforced.

20 Solidarist associations Solidarist or other organisations set up by both employers and workers for purposes of economic and social welfare may not be treated more favourably than trade unions and shall be prohibited from exercising the rights pertaining to trade unions, in particular the right to collective bargaining by means of direct settlements between employers and non-unionised workers.	▪ The law affords such organisations the right to engage in collective bargaining and the right to sign collective agreements. ▪ The law affords such organisations privileges not enjoyed by trade unions.

Group 5: Collective Bargaining

21 Promotion of free and voluntary collective bargaining Governments should take all necessary measures to encourage and promote the development of free and voluntary collective bargaining.	▪ Legislation affords non-unionised workers the right to engage in collective bargaining even in cases where a trade union exists in the same unit/establishment or group of establishments. ▪ Legislation gives the administrative authorities the power to replace a trade union that refuses to begin collective negotiations by another, which shall negotiate and sign an agreement on behalf of the former. ▪ Legislation requires collective agreements concluded by first-level unions to be approved by higher-level unions. ▪ Legislation does not provide for the establishment of machinery, *i.e.* bodies and procedures, to facilitate the Parties in the context of collective bargaining. Such procedures include, *inter alia*, mediation, conciliation, voluntary arbitration, procedures allowing access to the information necessary for meaningful negotiations, *etc*.
22 Exclusion from the right to collective bargaining All workers without distinction shall enjoy the right to free and voluntary collective bargaining. (Note: Convention No. 98 does not determine the position of public servants exercising authority in the name of the State, the armed forces and police personnel).	▪ Exclusion or prohibition from the right to collective bargaining of workers employed in the public, private or agricultural sectors, with the exception of civil servants engaged in the administration of the State. ▪ Exclusion or prohibition from the right to collective bargaining of workers on account of race, nationality, political affiliation, sex, marital status, or age. ▪ Exclusion or prohibition from the right to collective bargaining of certain groups of workers (executive or managerial staff, prison staff, fire service personnel, medical personnel, independent contractors, domestic workers, seafarers, *etc*.). ▪ Exclusion or prohibition from the right to collective bargaining of workers in export processing zones. ▪ Exclusion or prohibition from the right to collective bargaining of workers in an enterprise or group of enterprises. ▪ Exclusion or prohibition from the right to collective bargaining of workers in a designated region.

23 Designation of the bargaining partner / Most representative trade union The right of workers' organisations to collective bargaining shall not be subject to excessive requirements. The most representative organisation at each level may be granted preferential or exclusive rights, provided that the designation is made according to objective and pre-established criteria.	▪ The conditions, which the law requires to be met in order for a trade union to be designated as a bargaining partner are excessive, hence many trade unions, including majority trade unions, are effectively excluded from collective bargaining. ▪ Legislation authorises the administration to designate the most representative trade union. ▪ Legislation does not stipulate the criteria for the designation of the most representative trade union. ▪ The criteria and procedures stipulated in law for the designation of the most representative trade union are not objective and impartial.
24 Level and scope of collective bargaining The Parties to collective bargaining shall have the right to freely determine the level at which collective bargaining shall take place and the sectors to be covered.	▪ Legislation determines the level at which collective bargaining shall take place. ▪ Legislation authorises the administration to determine the level of collective bargaining. ▪ Legislation prohibits the conclusion of collective agreements at a given level *e.g*. enterprise level, professional level, branch level, *etc*. ▪ Legislation determines the sectors to be covered by collective bargaining. ▪ Legislation authorises the administration to decide on the sectors to be covered by collective bargaining.
25 Negotiable issues and substantive outcomes of collective bargaining / Permissible restrictions The Parties to collective bargaining shall have the right to determine the negotiable issues and substantive outcomes of collective bargaining. In cases where imperative economic stabilisation policies require the imposition of restrictions, governments should ensure that these remain exceptional and proportional and that the living standard of those mostly affected is protected.	▪ Legislation imposes restrictions on the negotiable issues, either by excluding certain issues from collective negotiations or by explicitly permitting only certain issues to be determined through the process of collective bargaining. ▪ Legislation imposes restrictions on the free negotiation of the conditions of employment, in particular, on the free fixing of wages and wage increases. ▪ Legislation allows for the cancellation/nullification, suspension, or unilateral modification of collective agreements on grounds other than errors of form or non-conformity to the minimum standards laid down in labour law. ▪ Legislation assigns the task of determining the conditions of employment to government-appointed tripartite commissions.

26 Approval and registration of collective agreements The approval or registration of collective agreements may not be refused save on grounds of form or where their terms do not conform to the minimum standards set out in labour law. Any decision refusing the approval or registration of a collective agreement shall be subject to judicial review.	▪ Legislation affords the administrative authorities the right to refuse or revoke the approval or registration of collective agreements on grounds other than errors of form or non-conformity to the minimum standards laid down in labour law. ▪ Legislation does not provide for the right of judicial appeal against any decision refusing or revoking the approval or registration of freely concluded collective agreements. ▪ The grounds on which the approval or registration of collective agreements may be refused are not established/enumerated in law. ▪ The law does not stipulate a specific time limit within which the authorities shall approve freely concluded collective agreements. ▪ The procedure leading to the approval and registration of freely concluded collective agreements is excessively complex and lengthy.
27 Compulsory arbitration in the context of collective bargaining Compulsory arbitration should not be imposed on the Parties to collective bargaining, except in cases of disputes in public and essential services in the strict sense of the term, to break a deadlock after protracted and fruitless negotiations, or at the initiative of workers' organisations for the conclusion of a first collective agreement.	▪ Legislation allows the authorities to impose compulsory arbitration for the settlement of disputes in services other than public and essential services in the strict sense of the term. ▪ Legislation allows the authorities to impose compulsory arbitration without affording the Parties to collective bargaining sufficient time and assistance to negotiate and reach an agreement. ▪ Legislation allows the authorities to impose compulsory arbitration in cases other than at the initiative of workers' organisations for the conclusion of a first collective agreement. ▪ Legislation allows for recourse to compulsory arbitration at the request of one Party only.

4.2.3. Coding Rules Dealing with Procedural Issues

4.2.3.1. General Rules

As indicated above an instance of non-compliance is a violation by a State Party, through law or practice, of any of the standards embodied in Conventions 87 and 98, and which is identified as such in the observations or direct requests of the Committee of Experts on the Application of Conventions and Recommendations. In cases where several instances of non-compliance cover the same issue, such as when a number of different laws or administrative

practices with the same or very similar subject-matter infringe the same standard, all of the interrelated violations shall be considered as component parts of a single violation, and hence be coded as a single instance of non-compliance.

In addition to the information concerning instances of non-compliance, this study also identifies in the Committee's reports mere requests for information, that is requests not related to an observed violation of the Conventions on issues closely monitored by the Committee. These too are coded because what in a given year appears as a mere request for information evolves over time to be an instance of non-compliance.

The differentiation between instances of non-compliance and mere requests for information may, in certain cases, raise the question of what shall be identified as a violation and what as a mere request for additional information. In other words, whether a comment made by the Committee in its observations or direct requests indicates a violation of the Conventions' provisions or a mere request for information. This is not a superfluous remark given that it is not always crystal clear whether a comment coupled with a request for information acknowledges the existence of a violation or is simply intended to provide the Committee with additional information. However, a careful reading of the Committee's reports reveals that the Committee does not confine itself in providing a description of national labour laws and practices but also expresses its judgment on the content of these laws and practices. In its observations and direct requests, the Committee incorporates its assessment of the situation in a given country, often by explaining how certain laws and practices infringe the standards of ILO Conventions. This significantly reduces the latitude for subjective assessment when coding and evaluating the respective information.

As indicated in part 4.1., the established 27 key concepts (Table No. 1) represent the standards embodied in the two Conventions. Every instance of non-compliance reported by the Committee shall be assigned to the key concept, the subject matter of which corresponds to that of the violation. Similarly, a mere request for information shall also be assigned to the key concept, the subject matter of which corresponds to the issue under investigation. It sometimes occurs that a reported instance of non-compliance has multiple effects, violating the standards embodied in more than one key concept. With a view to minimising the risk of biased results by

coding a larger number of violations than that actually reported by the Committee of Experts, an instance of non-compliance may not be assigned to more than two key concepts.

Instances of non-compliance or requests for information, which in the Committee's reports appear under the heading of "Direct requests" are coded in italics. Hence, instances of non-compliance appearing in the Committee's report under "observations" shall be coded with an **N**, and those appearing under "direct requests" shall be coded with an *italicised **N***. By the same token, cases in which the Committee reports the existence of a violation, *i.e.* an instance of non-compliance but at the same time requests the government concerned to supply it with additional information on that particular point, shall be coded as **N Inf**, if under observations, or as ***N Inf*** if under direct requests. Mere requests for information on a given matter, *i.e.* requests not related to an observed violation, shall be coded with an **Inf** – when under observations-- or an ***Inf*** – when under direct requests-- mainly for informational purposes. Furthermore, every instance of non-compliance and every request for information shall be attributed a consecutive number, *e.g.* N(1),…,*N(n) Inf.* All relevant data, which does not actually appear in the Committee's reports, that is, data extracted from the so-called supplementary sources as well as data, which is presumed to be valid, shall be indicated in brackets.

To sum up, an instance of non-compliance addressed in the form of "observation" is coded **N**, while an instance of non-compliance addressed in the form of "direct request" is coded ***N***. If that instance of non-compliance comes with a request for additional information, it shall be coded with **N Inf** or ***N Inf*** –again depending on whether it appears under "observations" or " direct requests". Following the same pattern, a mere request for information is coded **Inf** or ***Inf***.

Every instance of non-compliance, irrespective of whether in the form of an "observation" or a "direct request", shall be further specified through accompanying modifiers. These are divided into two groups. The first comprises a number of symbols/signifiers used to indicate the scope of a given instance of non-compliance. They can be summarised as follows: **N (or *N*) law** is used to indicate a situation where a national law that infringes the standard embodied in the key concept is not applied in practice. Thus, while national law is in breach of the principles on freedom of association, national practice is not. **N (or *N*) sec** signifies an instance of non-compliance that affects employees in a sector of the economy, *i.e.* employees in the public, private or agricultural sectors; **N (or *N*) epz** stands for an instance of non-compliance affecting employees in export processing zones; **N (or *N*) group** is used to describe an instance of non-

compliance which affects a specific group of employees in any sector or across sectors, such as managerial or executive staff, seafarers, independent contractors; **N (or *N*) est** is used to denote an instance of non-compliance that targets employees in an establishment or group of establishments; and **N (or *N*) reg** indicates an instance of non-compliance that impacts on a specific region.

The second group of modifiers is used to show the evolution throughout the period under examination. It must be recalled at this point, that the current study seeks to produce a methodology for assessing State compliance in the period between 1990 and 2002. To this end, it is essential to indicate the changes, positive or negative, made at the national level during the aforementioned time span. This being so, the following symbols seek to capture these changes: **N (or *N*)-comp** indicates introduction of measures that bring national law in full conformity with the requirements of Conventions 87 and 98; **N (or *N*)-imp** stands for improvement, that is the introduction of laws and policies which bring national conditions closer to the standards of Conventions 87 and 98; and **N (or *N*)-det** signifies deterioration, namely the adoption of measures or practices that lower national labour standards in freedom of association, and hence broaden the gap between domestic conditions and the stipulations of Conventions 87 and 98. All of the above-described signifiers may be used in all possible combinations for the purpose of giving an accurate account of the information contained in the Committee's reports.[50]

One of the problems that may arise in the course of coding the substantive information according to the foregoing principles is that it is not always clear whether a positive comment made by the Committee points towards compliance or mere improvement; in other words, whether observed progress at the national level merits to be coded as compliance or merely as improvement. An examination of subsequent reports should help clarify this point; if the Committee brings up the issue in any of the following reports, this is a clear indication that the issue has not been conclusively settled and hence the aforesaid positive mention cannot be taken to mean compliance. Another factor to be taken into consideration is the language used by the Committee. In its observations and direct requests, the Committee often uses certain expressions to communicate its disposition towards changes brought about through the revision of national laws and practices. These include expressions such as "with satisfaction", "with interest", "with

[50] Table No. 3 gives a detailed account of the symbols and modifiers used and the meaning attributed to them.

concern", or "the Committee urges the government", "the Committee draws attention", " the Committee regrets" *etc*. These expressions provide guidance and assistance in coding the relevant information. For instance the phrase "with satisfaction" usually indicates the introduction of laws that bring about compliance. Nonetheless, in certain cases, it may be used to describe a big step forward but not necessarily compliance. This shows that the Committee does not use certain phraseology to consistently describe a specific situation. It is for this reason that, for the purposes of the current study, these phrases shall only be taken into account together with their context, *i.e.* together with the pertinent substantive information provided by the Committee.

Table No. 3 - List and Meaning of Symbols and Modifiers

	Observation	*Direct Request*
Instance of non-compliance	N	*N*
Specific instance of non-compliance, with (1) designating the first example identified in the report and (n) designating the last	N(1), …, N(n)	*N(1), …, N(n)*
Instance of non-compliance accompanied by a request to the government concerned to supply additional information on the particular point in question	N(n) Inf	*N(n) Inf*
Mere request for information, *i.e.* a request for information not related to an observed instance of non-compliance	Inf	*Inf*
Instance of non-compliance where the national law that infringes the standard embodied in the key concept is not applied in practice	N(n) law	*N(n) law*

National law is in line with ILO Conventions but there exists a *de facto* situation that clashes with the requirements thereof.	N(n) prct	*N(n) prct*
Instance of non-compliance that affects employees in a sector of the economy	N(n) sec	*N(n) sec*
Instance of non-compliance affecting employees in export processing zones	N(n) epz	*N(n) epz*
Instance of non-compliance which affects a specific group of employees in any sector or across sectors	N(n) group	*N(n) group*
Instance of non-compliance that targets employees in an establishment or group of establishments	N(n) est	*N(n) est*
Instance of non-compliance that affects workers in a specific region	N(n) reg	*N(n) reg*
Introduction of one or more measures that bring national law in full conformity with the requirements of Conventions 87 and 98	N(n)-comp	*N(n)-comp*
Introduction of one or more measures that bring about improvement of national labour standards in freedom of association	N(n)-imp	*N(n)-imp*

Introduction of one or more measures that lower national standards and increase the gap between the situation on the ground in a given State and the standards envisaged in Conventions 87 and 98	N(n)-det	*N(n)-det*

As illustrated above, the methodology used in this study introduces one level of improvement and deterioration respectively. Nonetheless, one should be mindful of the fact that it would be possible to introduce two levels of improvement and deterioration, one to signify the improvement or respectively deterioration of a moderate scale and one to indicate progress or regression of a large scale.[51] In such a case, the signifiers could be used in the following manner: **N (or *N*)-prg** to indicate change designed to bring about a significant improvement of national labour standards through the introduction of comprehensive and extensive measures; **N (or *N*)-imp** to signify improvement, to be read in the current context as positive change of a moderate scale; **N (or *N*)-rgs** to show regression, that is, the introduction of measures which curb freedom of association at the national level and substantially increase the gap between the situation on the ground in a given State and the standards envisaged in ILO instruments; and **N (or *N*)-det** to denote deterioration, namely the introduction of measures which constitute a setback in the application of the principles on freedom of association. The obvious difficulty with the latter proposal, *i.e.* the use of two sets of modifiers for both improvement and deterioration, lies in the uncertainty concerning their accurate and consistent use. The cases with which one is confronted in practice do not always neatly fit into the one or the other category. In effect, it is often difficult to differentiate between a case of progress and one of mere improvement, or to decide whether a given instance should be coded as a mere deterioration or as a substantial regression in the application of Conventions 87 and 98. Thus, with a view to minimising the latitude for subjective judgment when coding the relevant information, the authors of the present paper opted for the idea of introducing one degree for improvement and deterioration respectively.

[51] Table No. 4 presents the list of modifiers to be used if one adopts the idea of introducing in the coding scheme two degrees for improvement and deterioration respectively.

Table No. 4 - List and Meaning of Symbols and Modifiers (Two Levels for Improvement and Deterioration Respectively)

Introduction of comprehensive measures designed to bring about a significant improvement in the application of Conventions 87 and 98	N(n)-prg	*N(n)-prg*
Introduction of measures that bring about positive change of a moderate scale	N(n)-imp	*N(n)-imp*
Introduction of measures that bring about regression, *i.e.* curb freedom of association and substantially increase the gap between the situation on the ground in a given State and the standards envisaged in ILO instruments	N(n)-rgs	*N(n)-rgs*
Introduction of measures that signify a deterioration, *i.e.* a setback in the application of freedom of association principles	N(n)-det	*N(n)-det*

The coding of the substantive information is carried out in a two-stage process. The first involves the task of identifying in the Committee's reports the various instances of non-compliance and assigning them to the corresponding key concepts by quoting for each one of them the comments made by the Committee. Building on the first stage, the second entails the actual coding of the information from the quoted excerpt according to the rules presented in the preceding paragraphs. For purposes of a systematic approach, two standard coding templates are used for all countries, one for each of the coding stages. The template used for quoting the relevant information for the Committee's reports consists of a table the far left column of which

is used for listing the key concepts while all other columns to the right represent a year starting from 1990 or 1991 and up until 2002 or 2003, depending on the years in which reports are available for each country.[52] The template used for the actual coding of the quoted excerpts is slightly different. The first column to the left again displays the key concepts; each of the columns between the first column on the left and the last on the right represents a year in the period between 1990 or 1991 and 2002 or 2003, again depending each time on when a report by the Committee is available, and contains indicators of the observed instances of non-compliance; the last column to the right gives explanation on the content of the preceding indicators.[53] The list of key concepts appearing in each country table is each time adjusted to the profile of the country under examination. This means that a table in which the relevant country information is coded displays on its left column not the entire list of key concepts, as presented here under 4.1., but only those key concepts, the standards of which are violated by the observed instances of non-compliance in the country concerned.

4.2.3.2. Special Cases

i) Lack of Continuous and Uninterrupted Follow-Up on Observed Violations

When the Committee takes notice of a situation incompatible with the standards envisaged in Conventions 87 and 98, it normally follows up the matter until such time as the State Party concerned takes measures to bring the situation in line with the requirements of Conventions 87 and 98. In practice, this means that the Committee reports on a matter for as long as this remains under scrutiny as an instance of non-compliance, and ceases to comment on it when it no longer constitutes an instance of non-compliance. However, this is not a practice unswervingly followed by the Committee. Sometimes, the Committee discontinues its follow-up of a specific issue, to only take up the same issue a number of years later. When judging the consistency and continuity with which the Committee treats a given matter, it must be kept in mind that the regular reporting cycle for Conventions 87 and 98 requires the Committee to produce country reports every two years. Nonetheless, it is not rare that the Committee has to deal with specific violations raised within the framework of the Freedom of Association

[52] Appendix I.
[53] Appendix II.

Committee or that of the International Labour Conference. Oftentimes, due to the gravity of these violations, the Committee is compelled to examine them as a matter of urgency and, hence, to issue reports outside its regular reporting cycle. For the most part, these reports deal exclusively with those very specific issues, leaving all other matters to be dealt with in the regular report. Other times, the Committee abstains from following up an issue it has raised in previous observations for the mere reason that the State concerned has failed to provide the necessary up-to-date information. When the Committee is not satisfied that the issue has been settled in the meantime, it will normally bring up the matter at a later stage and require the State in question to submit information on the progress made on the particular matter. What follows from the above is that the lack of follow-up in a given year is not to be construed as proof that the violation in question has been rectified.

Given that the present study seeks to capture the evolution of the law and practice on freedom of association in the various State Parties, the lack of follow-up poses the question of how to code instances of non-compliance which the Committee, after having raised, desists following up on without giving any indication of settlement or progress. For the purpose of giving as accurate a representation of the Committee's appraisal as possible, instances of non-compliance which appear in the Committee's report in a given year and which are not raised by the Committee in all subsequent reports, but do reappear either in between reports or in a later report, shall be presumed to persist throughout the period between the first and last reports in which they appear.[54] For instances of non-compliance, which the Committee after having raised in the early years of the period under investigation, desists from mentioning in all subsequent reports up to 2003, it shall be presumed that the Committee considered the matter as settled.

If, for purposes of accuracy, it is considered important to obtain additional information concerning the dates at which national laws were introduced or enacted, recourse may be made to the secondary sources, indicated in part three. These include: The archive of country files of the ILO International Labour Standards Department, NATLEX, the database of national labour, social security and related human rights legislation maintained by the ILO's International Labour Standards Department and also the International Observatory of Labour Law, a site which among

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[54] For purposes of consistency, for the years in which an instance of non-compliance is presumed to persist, it shall be indicated in brackets. This is consistent with the rule introduced under 4.2.3. that all relevant information that does not actually appear in the Committee's report shall be coded in brackets.

other provides a National Labour Law Profiles section (basic information on labour law applicable in ILO member States), a Labour Law News section (articles and links to information on new legislation adopted throughout the world), a Useful Links section (connecting with a number of sites, search engines and databases of interest to labour law specialists), a Studies and Articles section (a selection of labour law research materials). If ambiguity persists, it is advisable to consult experts in the International Labour Standards Department of the ILO.

ii) Noting Progress on Issues Not Previously Identified as Instances of Non-Compliance

As indicated already, every discrepancy in national law or practice identified by the Committee is coded as an instance of non-compliance. This basic rule applies to all observed violations, including those that come about in any of the years after 1990. More complicated is the reverse case, namely when the Committee notes progress or even compliance on an issue which it never before observed as being in defiance of the ILO standards. In such cases, the instance of progress or compliance shall be coded under the year in which the Committee notes it and recourse to the supplementary sources should help identify the year in which the respective instance of non-compliance came about. For the years in between, it shall be presumed that the particular instance of non-compliance persisted.[55]

4.3. Proposal to Develop A System for Measuring State Compliance with Conventions Nos. 87 and 98

The present study proposes a methodology for coding CEACR reports on Conventions 87 and 98. It does not furnish country-level compliance scores or rankings on freedom of association and collective bargaining. Nevertheless, the established scheme may very well serve as the basis for producing measurements of adherence to the ILO standards on freedom of association.

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[55] Here again, the information that does not appear in the Committee's reports but is considered pertinent shall be put in brackets.

Measuring labour standards is not a novel idea. As shown in part two of this paper, a number of studies have been published, which propose systems for measuring State performance with respect to international labour standards. Yet, it appears that the existing systems either lack the required transparency or fail to capture the qualitative difference between the various violations, *i.e.* the different ways in which international labour standards are violated. An assessment scheme cannot furnish accurate gauges if constructed only on the basis of a weighting scheme that defines the greater or lesser importance of the rights guaranteed in Conventions 87 and 98. That is so simply because States do not always violate the standards embodied in ILO Conventions in one and the same way. National laws and practices of State Parties to Conventions 87 and 98 infringe the standards envisaged therein in a number of different ways and, in the authors' view, these different ways can be identified and evaluated on the basis of their subject-matter, scope, extent, duration, *etc.*, that is, on the basis of objective criteria, applied in identical fashion to all identified violations. In effect, this means that there is a qualitative difference not just between the various rights safeguarded in the Conventions but also between the various ways in which countries may violate the provisions of the Conventions, and that is precisely what a methodology for measuring freedom of association on the basis of textual sources must capture. In line with this proposition, the current analysis proposes a two-dimensional weighting scheme, one dimension for assessing the importance of the standards embodied in Conventions 87 and 98, as exemplified in the established key concepts, and one for assessing the severity of the recorded instances of non-compliance.

To illustrate one potential scheme, one could think of establishing three or more categories of importance for the rights stipulated in the two Conventions (Hierarchy of Rights) and three or more categories of severity for the observed violations (Severity of Violation) respectively. As to the importance of the rights, one could envisage: **Category I, Fundamental Rights**, *e.g.* right to life and physical integrity; **Category II, Enabling Rights**, *e.g.* right to establish or join a trade union, right to collective bargaining; **Category III, Standard Rights**, *e.g.* right of workers to freely elect their representatives. Similarly, in respect of the observed violations one could consider: **Category I, Very Serious Violation/Instance of Non-Compliance**, *e.g.* impunity for perpetrators of murder or forced disappearance; **Category II, Serious Violation/Instance of Non-Compliance**, *e.g.* exclusion of a number of sectors from the right to establish or join trade unions; **Category III, Moderate Violation/Instance of Non-Compliance**, *e.g.* absence of bodies

and mechanisms facilitating collective bargaining. Undeniably, the nature of the infringed right will greatly determine the severity of an instance of non-compliance; yet, it may also be the case that an important right is infringed in a less severe manner.[56] As to the latter dimension –severity of violations— the work carried out here, namely the identification of specific examples of violations for each of the 27 key concepts and especially their listing in what the authors consider to be a rough order of severity (Table No. 2), should be the starting point for further reflection and discussion – here, the involvement and input of the ILO Standards Department would be indispensable.

5. Empirical Results

5.1. Argentina

The main problem facing Argentina in the period between 1991 and 2002 was that the legislative framework, Act No. 23551/1988, impeded the development of a system of trade union pluralism. The law differentiated between workers' associations with trade union status and those that were merely registered. Only one association of workers, namely the most representative, in each branch or industry within a given geographical area was granted trade union status. In effect, minority and enterprise unions, as well as unions representing crafts, occupations or categories of workers were excluded from trade union status and the associated privileges, including special protection for union representatives, the right to benefit from the check-off of union dues and the right to collective representation. A positive step was taken in 2000 when Decree 843 removed from the list of essential services education and transport services while also allowing for strike action in those services. Decree 843/2000 also repealed Decree 2184/1990, which granted the Minister of Labour the power a) to declare a strike illegal and b) to define the minimum service to be maintained in the event of strike in the essential services. Under the new law, the Minister was given the power to determine the minimum service imposing coverage up to 50 per cent, only in the event that the Parties concerned fail to

[56] Hence, the exclusion of a large number of sectors from the right to establish trade unions would be more severe a violation than the exclusion of a small number of workers. The scope of a violation should be one of the factors to be taken into account in determining its level of severity.

reach an agreement. In addition, Law 25250/2000 repealed previous legislation, which allowed recourse to compulsory arbitration.

The right to collective bargaining of Seafarers was compromised when a number of collective agreements were repealed under Decrees 817/1992 and 1264/1992. The initiation of a policy of dialogue in the framework of the Tripartite Consultation Commission in 1995 signified an improvement. At the same time, however, the executive in the Province of Buenos Aires vetoed a draft law that guaranteed the right to collective bargaining of public officials. As regards the scope of collective bargaining, Decree 1554/1996, stipulated that, in the event that the Parties failed to reach an agreement, the Minister of Labour would decide on the sectors to be covered, provided the coverage did not exceed the minimum scope proposed. The issue was settled when Act No. 25250/2000 provided for the possibility of collective bargaining at all levels and granted representation of workers in the negotiation of collective agreements by the union which represents them. Another point raised by the Committee concerned the restrictions on wage negotiations imposed by Decree 334/1991, and the fixing by Decrees 435/1990 and 1757/1990 of a minimum wage for all public activities irrespective of the existence of collective agreements in force. The latter Decree also allowed for the nullification in collective agreements of clauses that were considered prejudicial to the productivity and efficiency of public enterprises, while Decree 817/1992 allowed for the suspension in collective agreements of clauses, which were prejudicial to the productivity in the merchant navy and port sectors. Acts Nos. 23547/1987, 25546/1987 and Decrees 470/1993 and 1553/1995 gave the public authorities the power to refuse the approval or registration of collective agreements which infringed the norms of public order or significantly affected the overall economic situation of the country or which violated the criteria of productivity, investment, the introduction of technology, the system of vocational training and the legislation in force, hence, affording the authorities a large degree of discretion concerning the approval and registration of collective agreements. In response, the Government indicated that in its recent practice, there had not be instances of refusal to approve collective agreements other than due to errors of form or non-compliance to the minimum standards of labour law.

5.2. Bangladesh

Exclusion of certain categories of workers from the right to organise: under the Industrial Relations Ordinance of 1969, as amended in 1990, and the Exports Processing Zones Authority Act of 1980 workers in export processing zones, managerial and executive staff, and workers at the Security Printing Press were excluded from the right to organise. Furthermore, workers engaged in more than one jobs were prohibited from joining more than one union. The development of a pluralistic system was obstructed by the fact that the law deprived workers organisations not as yet registered of certain preliminary rights, such as the right to collect funds and to provide certain services to their members. This, combined with restrictive registration requirements –a union could register only if it had a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments where it was formed— resulted in a situation where unregistered organisations were inhibited in their efforts to secure a sufficient membership base and, hence, meet the registration requirements. In addition, the Industrial Relations Ordinance, 1969, gave the Registrar of Trade Unions the power to cancel a registration if union membership fell below the 30 per cent threshold. Under the same law, as amended in 1985, eligibility for trade union office was conditional on trade union membership, while workers dismissed for misconduct became ineligible for holding trade union office. The Government Servant (Conduct) Rules, 1979, curtailed the right of public servants associations to freely organise their activities and disseminate information by permitting only a limited number of issues to form the subject matter of their publications. Furthermore, the Industrial Relations Ordinance allowed for the prohibition of strikes in public utility services as well as of strikes that exceeded 30 days, strikes that entailed serious hardship to the community or were prejudicial to the national interest. In addition, in order for a strike to be lawful, it had to be called by a collective bargaining agent and also be approved by a majority of 75 per cent of the workers in the establishment or group of establishments where it was called, while the penalties prescribed in law for participation in unlawful industrial action were too severe.

As regards Convention No. 98, in the Committee's opinion, the Industrial Relations Ordinance of 1969 did not provide sufficient protection against acts of interference by employers in trade union affairs. Furthermore, the Bangladesh Export Processing Zones Authority Act, 1980, excluded workers in export processing zones form the right to collective bargaining, while the Government's declared intention to afford workers in export processing zones the right to

collective bargaining was not implemented. According to the Industrial Relations Ordinance, only registered unions, *i.e.* unions with a membership of at least 30 per cent of the total number of workers, were afforded the right to collective bargaining. In the opinion of the Committee this constituted an impediment in the development of collective bargaining. A last point to be made in relation to Convention 98 concerns the observations made by the Committee on the Government's practice to appoint tripartite wage commissions for the purpose of determining wage rates and other conditions of employment in the public sector.

5.3. Costa Rica

In the period between 1991 and 2002 Costa Rican labour legislation excluded workers in agricultural and stock-raising enterprises with no more than five permanent employees from the right to organise. Moreover, the Labour Code obliged workers' associations to elect their Executive Committees every year while prohibiting foreign nationals from holding office or exercising authority in trade unions. In its observations, the Committee also stressed the need for labour legislation to establish a specific short period for the approval or registration of a trade union by the administrative authorities. With a view to guaranteeing the right of trade union leaders to hold meetings in plantations, the Government adopted in April 1993 an administrative order of compulsory application that provided for increased vigilance against freedom of association violations. The Committee also submitted its observations concerning the restrictions on the right to strike of certain categories of workers. Up until 1998, the Labour Code imposed excessive restrictions on the right to strike for public servants, workers in agriculture and stock-raising as well as workers in the transport and fuel sectors. As a result of the decision of the Supreme Court of Justice to declare the strike restrictions in the public, agricultural, stock-raising and forestry sectors unconstitutional, the respective sections of the Labour Code were repealed and the above categories of workers were afforded the right to strike. Nonetheless, the prohibition of strike action for workers in transport and fuel enterprises remained in force. In addition, the Labour Code required a strike to be approved by a majority of 60 per cent of the workers in the establishment or group of establishments where it was called. A positive step was introduced by Decree No. 7348 of June 1993, which repealed the sections of the Penal Code that allowed for the imposition of penalties to public servants for undertaking strike action.

With regard to the Government's obligation to address anti-union discrimination, the Committee noted the positive measures introduced by Act No. 7360 and in particular the measures designed to guarantee job stability for trade union officers and members, to prohibit acts that impede the free exercise of the right to organise and to protect workers from unwarranted dismissal. Nonetheless, delays in processing cases of anti-union discrimination and lack of enforcement of the sentences handed down by the courts persisted. A Bill adopted within the framework of a tripartite consensus in 2001 was in 2002 on the agenda of the Legislative Assembly. While acknowledging the Government's efforts to eliminate the inequality between solidarist organisations and trade unions and to support the conclusion of collective agreements by the latter (Act No. 7360/1993, Workers' Protection Act of 2000), the Committee commented on the imbalance between the large number of direct pacts concluded by non-unionised workers and the number of collective agreements concluded by trade unions (130 to 12 the ration in the private sector in 2003). From 1991 to 2001 public servants were excluded from the scope of the Labour Code and, thus, from the right to collective bargaining. The introduction of Decree No. 29576-MTSS in 2001 signified some improvement since it provided only for the exclusion of public servants of the highest level. Stressing the need for legislative safeguards concerning the application of concluded collective agreements, the Committee also commented on the non-application of collective agreements signed by FERTICA S.A., as well as the decision of the Constitutional Chamber to declare unconstitutional certain clauses of the agreements signed by RECOPE – a public owned oil refinery.

5.4. Egypt

The provisions of the new Labour Code that was introduced in 2003 – enacted by Law No. 12 of 2003- did not apply to public servants, including those working in local Government units and public authorities, and domestic servants. Thus, the above categories of workers were excluded from the right to organise. Furthermore, Act No. 12 of 1995 prohibited workers engaged in more than one occupation from joining more than one union. Acts No. 35 of 1976 and 12 of 1995 institutionalised the existing system of trade union monopoly by prohibiting the establishment of occupational organisations outside the existing trade union structure. In response to the Committee's observations, the Government proceeded with the creation of a tripartite Committee to review Act No. 35 of 1976. A number of measures introduced by

different laws amounted to an interference with the right of workers' organisations to freely elect their representatives. In particular, Act No. 35 of 1976 gave the General Confederation of Egyptian Trade Unions the power to exercise control over trade union nomination and election procedures. Act No. 12 of 1995, amending Act No. 35 of 1976, afforded the competent Minister the power to determine the date and procedure for the nomination and election of the executive boards of trade unions and the General Confederation of Trade Unions the power to determine the conditions and modalities for the dissolution of such boards. The latter law also curtailed the financial and administrative independence of trade unions by mandating the payment by lower level unions of certain of percentage of their income to higher level unions and also by granting the General Confederation of Trade Unions the power to determine the rules of trade union financial conduct and to control all aspect of trade union financial activity. As regards the right to strike, Act No. 35 of 1976 afforded the Public Prosecutor the power to request criminal courts to remove the executive committee of a trade union that had instigated work stoppages or absenteeism in a public service, thus, indirectly restricting the right of public servants' unions to declare a strike. The Labour Code of 2003 excluded from the right to strike public servants of State agencies, including local government and public authorities, domestic workers and workers in strategic and vital establishments. The Committee expressed the hope that the definition of strategic and vital establishments, which was to be decided by Ministerial Decree, would only cover establishments providing essential services in the strict sense of the word. Furthermore, under Act No. 12 of 1995 the right of unions to undertake strike action was subject to an authorisation by the General Confederation of Trade Unions while strike notification had to specify the duration of the action in question. The Committee also submitted its observations on the possibility of recourse to compulsory arbitration even outside the essential services, noting that the Labour Code of 2003 allowed for recourse to arbitration at the request of one Party also in services that did not fall under the definition of essential.

Another important comment concerned the lack of protection against anti-union discrimination acts and especially the provisions of the Labour Code that legitimised the dismissal of workers participating in strike action which infringed sections 192 and 194 thereof, *i.e.* strike the duration of which was not specified and strike in strategic or vital establishments. By the same token, the Committee also commented on the absence of sufficiently deterrent sanctions against acts of interference by employers or their organisations in trade union affairs.

Certain provisions of the Labour Code of 2003 were in sharp contrast with the principle of voluntary collective bargaining, especially section 148, under which the authorities could replace a workers' organisation that refused to negotiate with another organisation which would carry out the negotiations and sign an agreement on behalf of the Party that refused to negotiate as well as section 153, under which the validity of a collective agreement was subject to an approval by the General Confederation of Trade Unions. The Committee also criticised the exclusion from the right to collective bargaining of public servants, domestic workers and workers who are relatives of the employer. Restrictions were also imposed on the free determination of the substantive outcomes of collective bargaining. Up until 2003, the validity of a collective agreement was subject to the economic interest of the country (Labour Code, as amended by Act No. 137/1981); after the introduction of the new Labour Code in 2003, the validity of a collective agreement became conditional on its conformity with the law on public order and general ethics. In this regard, the Committee requested the Government to submit information on the content of the laws that determined the validity of collective agreements. Furthermore, the Labour Code of 2003 did not spell out the specific grounds on which the competent authorities may refuse the registration of a collective agreement and also allowed for the possibility of recourse to arbitration at the request of one of the Parties in cases of disputes concerning a) the renewal of a collective agreement and b) the modification of a collective agreement due to exceptional and unforeseeable circumstances rendering its implementation by one of the Parties very difficult.

5.5. Greece

In the period between 1990 and 2003, the Committee criticised the exclusion of seafarers from the scope of Act No. 1264/1982 concerning the Democratisation of Trade Union Movement and the Protection of Workers' Trade Union Freedoms. In response to the Government's indication that, in spite their exclusion from the above law, seafarers were afforded freedom of association under the Constitution and other laws, the Committee requested precise information on the legal instruments that guaranteed seafarers' freedom of association. Act No. 1915/1990 on the Protection of Trade Union rights, the Rights of the Population and the Financial Autonomy of the Trade Union Movement –in force as of January 1992—established the principle of financial independence of trade unions by revoking the existing trade union security system. This development, albeit positive, was not well received by the General Confederation of Workers.

An acceptable solution was reached with the introduction of Acts No. 209171992 and 222471994, which allowed for the allocation of workers' contributions to second- and third- level organisations and to first level organisations representing over 500 workers. As regards the conditions for lawful industrial action, the Committee noted the repeal by Act No. 1766/1989 of section 4 of Act No. 1365/1983 which required a strike in a State enterprise to have the support of the absolute majority of the registered members of base level trade unions. The Committee also requested information on the conditions under which seafarers' organisations were entitled to undertake strike action. Act No. 1915/1990, which authorised the employer to designate the workers to form the security staff in the event of a strike in the public sector or in services of public utility, was amended by act No. 2224/1994 which introduced procedures enabling the social partners to negotiate an agreement concerning the designation of security staff during strike in public utility services and also providing for recourse to third Party settlement, in case of disagreement.

The restrictions imposed by Act No. 2025/1992 on the right to collective bargaining of workers in the public sector, including enterprises of public interest, local administration and State banks, were repealed by Act No. 2738/1999. Noting Act No. 3276/1994 on Collective Agreements Concerning Work at Sea, which authorised the Minister of Mercantile Marine to designate the most representative seafarers' organisation for collective bargaining purposes, the Committee asked the Government to indicate the criteria for the designation of the latter and the manner in which the guarantees associated with the recognition of the most representative organisation are ensured. The Committee also noted Act No. 1876/1990 which enabled collective bargaining at the enterprise- profession- and branch level. With respect to the right of the Parties to freely determine the substantive outcomes of collective bargaining, Act No. 2129/1993 suspended the implementation of the national collective agreement and set maximum wage increase levels for workers in the public sector. Nonetheless, these measures applied only in 1993 and workers in the public sector were covered by the national collective agreement concluded in March 1994. Under Act 2578 of 1998 public enterprises that presented negative economic results were obliged to modify the Personnel General Rules within a period of six months from the date of its publication in the Official Gazette; in case the six-month period lapsed without an agreement, the Act allowed for a statutory modification. Act 2738/1999 rectified the situation by repealing the restrictions on collective bargaining for workers in the

public sector. At the same time, the introduction of Act No. 2602/1998, which established the conditions of employment for workers in the State-owned Olympic Airways, affected the application of collective agreements in force.

5.6. Hungary

The most contentious issue facing the country after the political reform in 1989 in relation to freedom of association for trade union purposes was the distribution of trade union assets. Act No. 28/1991 regarding the Protection of Trade Union Property did not have the support of the National Confederation of Hungarian Trade Unions. In 1992, the National Confederation of Hungarian Trade Unions and the National Council of Trade Unions concluded an Agreement on the Distribution of Trade Union Assets. This was reflected in Act No. 13/1993, amending Act No. 28/1991, which in effect placed all trade unions on an equal footing regarding the distribution of trade union assets. The Committee expressed satisfaction about the legislative amendments that occurred in 1989, notably the adoption of a new Constitution, Act No. II on the Right to Organise and Act No. VII on the Right to strike. These amendments introduced a system of trade union pluralism and guaranteed workers the right to strike for the purpose of defending their economic and social interests. Nonetheless, in respect to the latter, the Committee commented on section 3(3) (c) of Act VII of 1989, which prohibited strike in services charged with the prevention of natural disasters, including transport services, emphasising the fact that transport services did not fall under the definition of essential services in the strict sense. In addition, the Committee requested information on the exact meaning of section 3(1) (c) and 1(3) of the latter Act, which prohibited strike aimed at challenging individual acts or omissions of employers that could be settled by judicial means and any abuse of the right to strike respectively.

With regard to the Government's obligation to ensure adequate protection against acts of anti-union discrimination, Act LI/1997, amending certain provisions of the Labour Code, and Decree 38/1997, amending Decree 17/1968, introduced penalties which strengthened the system of protection against acts of discrimination for trade union activities. At the same time, the legislative framework failed to provide for specific sanctions against acts of interference by employers in trade union affairs. Moreover, the Committee referred to Act LVI/1999, according to which collective bargaining rights are granted a) jointly to all trade unions if their cumulative power represents an absolute majority of the votes cast in the elections for works councils

(section 33 (3)), b) jointly to certain trade unions if each represents at least 10 per cent, and altogether 50 per cent of the votes cast in the elections (sections 33 (4) and 29 (4)), c) to one trade union if it received more than 65 per cent of the votes cast in the elections (section 33 (5)). In view of the foregoing, the Committee requested the Government to ensure that the requirements for the recognition of the bargaining partner are set at a reasonable level and that all unions are afforded bargaining rights, in the event that no union receives the required support.

5.7. Indonesia (ratified Convention 87 in 1998)

In its 2003 report, the Committee drew attention to the growing number of attacks and other acts of violence against trade unionists by paramilitary groups, criticising the absence of adequate sanctions and remedies for redressing such acts. It also condemned the practice of arbitrary arrest and detention of trade unionists and the reported cases of violence during detention.

The Committee also called attention to section 30 of the Act on the Basic Provisions Regarding Personnel, No. 43/1999. In the Committee's opinion, this provision effectively annulled the right of civil servants to organise, as provided for in the Act of the Republic of Indonesia Concerning Trade Unions, No. 21/2000. The latter Act also afforded the authorities the power to revoke an organisation's trade union status in any of the following cases: a) if its membership falls below the required minimum, b) if the union fails to communicate changes of its Constitution or by-laws within a period of 30 days (section 21) and c) if the union fails to report overseas financial assistance (section 31). Notwithstanding the provision for a right to appeal against a decision revoking union record number and trade union rights, Act No. 5/1986, the Committee stressed that the revocation of trade union status was not an appropriate penalty for violations of the obligations contained in Sections 21 and 31 of Act No. 21/2000. With regard to the right to strike, Section 139 of the Manpower Act of 2003 provided that strike action in hospitals, fire departments, enterprises in charge of sluices, air and sea traffic and railway services should not disrupt the public interest or endanger the safety of people. The Committee observed that railway services did not fall under the definition of essential services in the strict sense of the word and suggested the possibility of a provision for a minimum service during strike in public utility services. The Committee also noted that the penalties stipulated for

violations of Section 139 of the manpower Act of 2003 were disproportionably severe and requested the Government to repeal them.

Until 2000, the sole protection for victims of anti-union discrimination was the right to seek compensation, Act No. 1271964. The Act of the Republic of Indonesia Concerning Trade Unions, No. 21/2000, afforded workers a higher degree of protection against anti-union discrimination acts. Under the latter law dismissal, suspension, demotion or transfer on account of trade union activity constituted criminal offences threatened with fines of 100 to 500 million Indonesian rupiahs and/or a prison sentence of 1 to 5 years. The Committee also requested information on allegations of anti-union discrimination acts in export processing zones. Act No. 21/2000 also introduced measures to afford workers' organisations sufficient protection against acts of interference by employers. In particular, the Act prohibited employers from: a) preventing the establishment of a trade union, b) becoming administrators or members of a trade union, c) carrying out trade union activities. Under Section 43, the above acts constituted criminal offences sanctioned with fines of 100 to 500 million Indonesian Rp and/or a prison sentence of 1 to 5 years. Notwithstanding these improvements, the Manpower Act of 2003 allowed entrepreneurs to be present in procedures for the election of the most representative trade union. With regard to collective bargaining, the Committee noted the increasing number of collective agreements covering public servants and persons employed in State enterprises and requested the Government to submit information on the legislation governing collective bargaining in the public sector and in export processing zones after the introduction of the Manpower Act of 2003. Nonetheless, the Committee observed that Regulations Nos. 49/1954 and PER.02/MEN/1978 read together with Ministerial Regulation No. 05/MEN/1987 seriously obstructed workers' right to collective bargaining. Under the former only registered trade unions were afforded the right to collective bargaining; yet, the latter stipulated excessive registration requirements, thus placing an insurmountable obstacle to workers' right to collective bargaining. In view of the fact that the Manpower Act of 2003 provided for the specification by Ministerial Decree of the conditions and procedures for the conclusion of collective agreements, the Committee requested the Government to provide information on any subsequent decision on this point and also to clarify whether the Manpower Act of 2003 allowed for compulsory arbitration in the context of collective bargaining.

5.8. Nicaragua

Following the recommendations of the Commission of Inquiry, the Government returned the expropriated properties to the leaders of the Council of Private Enterprises.

Prior to 1996, public servants, self-employed workers in urban and rural sectors and persons working in family enterprises were excluded from the right to organise. The Labour Code that was introduced in 1996 recognised the right of all persons to organise, except for the armed forces personnel. Nonetheless, in effect, also public servants remained excluded from the right to organise because the Government failed to adopt regulations to implement the respective legislation, namely the Civil Service and Administrative Careers Act of 1990. The Regulation on Trade Union Associations of 1997 provided for the loss of trade union membership on any of the following grounds: a) absence from six consecutive session of the general assembly, b) non-payment of union dues for a period of three months, c) non-participation of trade union activity for a period of over six months. The Committee emphasised the need for the conditions governing trade union membership to be determined by the workers themselves and criticised the exclusion of foreign nationals from trade union executive boards, Section 21 of the 1997 Regulation on Trade Union Associations. As regards the establishment of trade unions, the labour Code of 1996 repealed the requirement that a trade union enjoyed the support of the absolute majority of the workers in the enterprise or establishment where it was formed and eliminated the obligation of trade union leaders to present to the labour authorities the registers and other documents upon requests by a trade union member. The 1996 amendment also repealed old Section 204 (b) of the Labour Code, thus allowing for the exercise of political activity by trade unions. Progress was also made in respect to the right to strike. The Labour Code prior to its 1996 amendment prohibited strikes in rural occupations when there was a risk that the produce would be damaged as a result of strike action and also required the calling of a strike to be supported by a majority of 60 per cent of the employees in the establishment where it was called. The 1996 amendment abolished the former prohibition and provided for the calling of strike action by an absolute majority of the total number of trade union members. Another point raised by the Committee concerned the power afforded to the authorities to impose arbitration to end a strike that lasted more than 30 days even in non-essential services.

With respect to protection against anti-union discrimination, the Labour Code, as amended in 1996, and the Regulation on Trade Union Associations of 1997 introduced measures

only in respect of trade union officers but not in respect of trade union members. The Committee stressed the need for providing sufficient protection to both trade union leaders and members. As to protection against acts of interference, the Committee observed that, in spite of the improvement brought about by the 1996 Labour Code and the Regulation on Labour Inspectors, No. 13/1997, the fines stipulated in the latter law remained inadequate and proposed the adoption of a system of fines based on a number of minimum wages. On the question of Government discretion concerning the approval of collective agreements, the Committee noted that Act No. 97/1990 repealed Decree No. 530/1980, which made the entry into force of a collective agreement conditional on the approval by the Minister of Labour. The more recent Act designated the Minister of Labour as depository of collective agreements and guarantor of their conformity to national law.

5.9. Poland

The equitable distribution of the trade union assets was one of the most difficult problems facing the country in the period between 1991 and 2002. In 1999 the Council of Ministers laid down the principles for the execution of the decisions of the Social Revedication Commission on the division and redistribution of trade union assets. Due to budgetary difficulties, non-cash liabilities in respect of decisions made in 2001 were discharged with treasury bonds. Liabilities in respect of decisions made after 31 December 2001 were discharged in cash.

Categories of workers restricted in their right to organise: Act No. 106/1989 afforded agricultural workers the right to establish and join occupational organisations of their own choosing. The Act of 21 May 1997 allowed officials in highly responsible and senior positions to associate with employees of the Supreme Chamber of Control while customs officers were granted the right to form and join trade unions in 1999. The Committee also inquired into the right to organise of medical personnel. Act 105/1989 introduced the possibility of trade union pluralism by repealing the provision in the Trade Union Act of 1982, which imposed the existence of a single trade union for each enterprise. The same law also discharged trade unions from the obligation to exercise functions related to labour discipline. Nonetheless, the Civil Service Act of 1998 banned civil servants from performing functions within trade unions and from publicly manifesting their political beliefs, hence interfering with their right to freely elect their representatives and to freely organise their activities. As regards the right to strike, the

Committee expressed great satisfaction for the adoption of the Act on the Settlement of Collective Labour Disputes in 1991 and Act No. 179/1989, which respectively recognised the right to strike and annulled all convictions for strikes undertaken after 31 August 1980. Yet, it criticised the provisions of the Civil Service Act of 1998 which forbid members of the civil service to participate in strikes that interfered with the normal functioning of their service, recommending the possibility of maintaining a minimum service.

Amnesty Act No. 172/1989 afforded to all persons who had been dismissed for trade union activities the right to apply for reinstatement to their former position. Yet, notwithstanding the latter development, the Committee observed that the sanctions for anti-union discrimination acts and acts of interference by employers in trade union affairs, introduced by the Act of 23 May 1991, were not adequate and asked the Government to indicate any other sanctions applicable for instances of anti-union discrimination. Following the Committee's observation concerning the criteria for designating the most representative trade union for collective bargaining purposes, the Government adopted the Act of 9 November 2000 introducing thereby representativeness criteria at both the national and enterprise level. The Committee's also commented on Act No. 134 of 1988 which required the Minister of Labour and Social Policy to examine the conformity of a collective agreement with the law and the social and economic policy of the State before approving its registration. In reply, the Government indicated that, in practice, collective agreements were rejected only due to procedural flaws.

5.10. Russian Federation

The 2001 amendment of the Labour Code, which entered into force in February 2002, repealed the provisions that maintained a system of trade union monopoly, thus allowing for the development of a pluralistic trade union system. At the same time, the new Code provided for the possibility of restricting the right to associate of State employees, managerial staff, women, young persons and persons employed under a civil law contract. The Committee welcomed the adoption of the Law on Trade Unions of December 1990, which afforded trade union organisations full independence in determining their structure, adopting their constitutive instruments, electing their representatives and organising their activities. Yet, the Committee stressed the need to amend section 11 of the Law on the Settlement of Collective Labour Disputes, which denied workers in the urban transport-, aviation- and energy sectors the right to

strike. It also criticised the restrictions of the right to strike introduced by the 2001 Labour Code, namely for employees in security and law-enforcement agencies and workers in transport and energy-production services. With regard to the conditions for lawful strike action, the Committee considered the required quorum – two-thirds of the total numbers of workers—and majority – absolute majority—to be excessive and criticised the legal provisions allowing for the imposition of disciplinary penalties for the failure to notify the duration of a strike or observe the notified duration. Another comment concerned the provisions of the Act on the Procedure for the Resolution of Collective Labour Disputes of 1995, which authorised executive bodies –or bodies of local self-government—to determine the minimum service to be maintained in the event of strike in the essential service. In relation to this issue, the Committee observed that, notwithstanding the provision of a right to appeal the decisions of the above bodies, the determination of the minimum service should be assigned to an independent rather than an executive body. As to the penalties for participation in unlawful strike, the Law on Emergency Powers of 1990 and the Decree of 16 May 1991 stipulated the imposition of fines and imprisonment of up to three years. Under the Labour Code of 2001 such action carried a punishment similar to the latter or could be considered as grounds for terminating the employment contract.

With regard to anti-union discrimination acts and acts of interference by employers in trade union affairs, the Committee noted the absence of specific penalties and remedies in the Federal Act on Trade Unions of 1996 and requested the Government to provide information on the protection afforded to workers against such acts. Noting that under the Labour Code of 2001 the specificities for the application of the provisions on social partnership, including those on collective bargaining, to civil servants shall be established by Federal Law, the Committee asked the Government to provide information on the content of the respective law and to indicate whether the Labour Code permits representatives of non-unionised workers to enter into collective negotiation even in cases where a trade union exists in the enterprise. Another observation concerned section 45 of the Labour Code, as amended in 2001, which prohibited the conclusion of collective agreements at the occupational / professional level. Information was also requested on certain provisions of the Law on Collective Labour Disputes of 1995, in particular on whether the latter allowed for the imposition of arbitration for disputes not settled through prior mediation.

5.11. South Africa (ratified Conventions 87 and 98 in 1996)

The legislative amendments that took place after the fall of the Apartheid regime introduced major improvements as regards trade union rights. The Constitution of the Republic of South Africa, Act No. 108/1996, and the Labour Relations Act, No. 66/1995 extended the right to organise to civil servants and rural workers. Yet, although the latter Act afforded every employee the right to establish and join a trade union, independent contractors were excluded from its scope because they did not fall under the definition of employee. In response to the Committee's request for information concerning the right of independent contractors to associate for the purpose of defending their occupational interests, the Government submitted that independent contractors were guaranteed freedom of association under the Constitution, and that, although not eligible to seek redress in labour courts, they were entitled to have recourse to the courts of the land. It further submitted that proposed amendments contemplated the extension of the Labour Relations Act coverage to independent contractors and persons involved in atypical employment relations. Furthermore, the Labour Relations Act, No. 66/1995 introduced trade union pluralism, provided for the simplification of the registration process for occupational organisations, revoked the power of public authorities to interfere in the internal affairs of trade unions and also recognised the right of workers to strike.

With regard to Convention No. 98, the Labour Relations Act extended the right to collective bargaining to civil servants and rural workers, provided a number of guarantees and facilities for the development of collective bargaining and also revoked the authorities' power to determine the scope of collective bargaining and to modify the contents of freely concluded agreements.

6. Conclusion

As the title suggests, this paper proposes a methodology for coding the reports of the Committee of Experts on Conventions 87 and 98. It also makes available the results of the application of the developed methodology to CEACR reports on eleven countries[57] namely Argentina, Bangladesh, Costa Rica, Egypt, Greece, Hungary, Indonesia, Nicaragua, Poland, the

[57] The existing results on additional ten countries have not yet been incorporated in the paper.

Russian Federation and South Africa, and hence provides evidence of the applicability of the proposed methodology. In addition, the paper puts forward the idea of further developing the methodology elaborated here for the purpose of constructing a system for measuring State performance on freedom of association on the basis of the CEACR reports.

A set of 27 criteria, "key concepts" in the current context – in accordance with which the information from the reports of the Committee of Experts is systematised— forms the basis of the project. The available information, *i.e.* the data contained in the reports of the CEACR on Conventions 87 and 98, is coded into instances of non-compliance, each one of which is assigned to the corresponding key concept. The coding principles, which are tailored to the specificities of the Committee's reporting methods, include rules dealing both with substantive and procedural questions. The coding rules resolving substantive issues mainly address possible linkages between the various key concepts and, consequently, the various instances of non-compliance while providing solutions for possible overlaps. The procedural coding rules, on the other hand, spell out the principles to be followed in the process of coding and introduce two sets of symbols for coding the extant data, the first signifying the scope of a given instance of non-compliance, and the second indicating the evolution during the period under scrutiny.

As indicated earlier, the present paper covers a time span of more than 10 years, from 1990 or 1991 to 2002 or 2003, depending in each case on what year reports are available. This approach allows for the possibility of identifying and coding cases of progress as well as regression, and ultimately encapsulating the evolution in the countries examined throughout the indicated period.

It is interesting to note that the proposed methodology is not the result of a purely theoretical process; rather, it was the actual "experimental coding" of the available information that allowed for the development of a workable methodology. It is believed that the choice of a diverse cross-section of countries to be evaluated offers a good sample of contingencies, suitable for testing the methodology developed. It is assumed that, if the coding and evaluating rules are applicable to the varied instances of non-compliance provided by the indicated sample of countries, the same rules will also be suitable for coding and evaluating a wide-range of country data.

The appended tables present the results from coding the reports of the Committee of Experts on eleven countries. Their value added is that they present the available information in a

systematic and accurate manner. Building on the work carried out, it would be useful to develop a scheme for evaluating the recorded instances of non-compliance on the basis of the model proposed here. In the authors' opinion, an assessment system premised on this two-dimensional weighting model would be more likely to provide sound and accurate measures than a system relying only on the relative importance of the rights enunciated in Conventions 87 and 98, or alternatively only on the perceived severity of the observed violations.