Labour Market and Social Policy Implications of Structural Change in Central and Eastern Europe

TRIPARTITE STRUCTURES IN CENTRAL AND EASTERN EUROPE AND THE USSR, FREEDOM OF ASSOCIATION AND THE ROLE OF THE STATE IN INDUSTRIAL RELATIONS

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Introduction

1. The aim of this paper is to examine the state of tripartite structures or institutions in the countries of Central and Eastern Europe and the Soviet Union, the effectiveness of those institutions as participants in the economic and social policy-making process, their representativeness as regards workers and employers, and the role played by the State in defining and regulating the social process. It is not intended as a comparative study of the labour laws or practices of the countries concerned.

2. It is possible to discern a number of common denominators in relation to all of the countries in question both in the past and at present. All, for example, were communist States with centrally-planned economies and all had Constitutions providing that, in one way or another, the Communist Party was the leading and guiding force in society and the nucleus of the political system and of all State and social organisations. The Party also determined the general parameters within which all social organisations could function. State ownership and control of all property and production and an ideology based on communality of interests prevented any development of an industrial relations system of the type generally found in countries with a market economy. Instead, workers’ organisations were, and could only be, "transmission belts" for the communication and application of State policy and decisions, and employers’ organisations, where such existed consisted of ineffectual groupings of managers who were part of the State apparatus. Freedom of association and collective bargaining as these are known in market economy countries were virtually non-existent and any labour disputes were settled by State decision, or quite simply by repression, rather than through the bargaining process or other forms of dispute resolution.

3. Perestroika in the Soviet Union and the discarding of communist ideology and centrally-planned economies in the other countries examined in this paper have revealed other common denominators, or rather common goals or objectives which all of these countries now seek to achieve. They have also revealed common problems as regards the type of mechanisms or structures that it is essential to put into place if these objectives are to be attained.
4. The principal objective for all the countries concerned is the restructuring of the economy and its transformation to a market-oriented one. In the social and labour fields this necessarily involves free, pluralistic and democratic institutions at all levels of society that can participate in, and contribute to the social and economic process. In addition to political freedom and civil rights it is essential for the economic viability of any democratic State that there exist an industrial relations system within which representative workers’ and employers’ organisations can not only operate freely but who actively participate in the economic and social life of a country.

5. The guiding principles of the International Labour Organisation are social justice, full freedom of association and genuine tripartism. Respect for these principles is fundamental to any meaningful progress towards solving the social and economic problems that now urgently face the countries under consideration. The fact that all these countries are members of the ILO and have committed themselves, through the act of ratification of International Labour Conventions to respecting certain obligations in the social and labour fields makes it relevant in this paper briefly to refer to previous action of the ILO in the field of freedom of association, the responses of the Governments concerned and ILO involvement today in the process of assisting these countries to seek solutions to the formidable social and labour problems with which they are confronted.

The ILO and the "Socialist" countries

6. In the late 1950s or early 1960s the various countries of Central and Eastern Europe and the USSR ratified the ILO’s Freedom of Association and Protection of the Right to Organise Convention (No. 87) adopted by the International Labour Conference in 1948. At around the same time they also ratified the complementary Right to Organise and Collective Bargaining Convention (No. 98) which had been adopted by the Conference in 1949. These two fundamental Conventions lay down the basic principles, applicable to all workers and employers without distinction whatsoever, (but subject to possible limitations in respect of the armed forces and the police) of the right to establish and join organisations of their own choosing, the right to carry out activities in full freedom without interference by the public authorities, the right not to be dissolved or suspended by administrative authority and the right of organisations to establish and join federations and confederations and affiliate with international organisations. The Right to Organise and Collective Bargaining Convention of 1949 laid down the ground rules for protection against anti-union discrimination or acts of interference, and obliged ratifying States to take appropriate measures to encourage and promote the development of voluntary arrangements for the negotiation of terms and conditions of employment.

7. Having formally ratified these Conventions the States concerned became automatically locked into the system of supervision and control of the supervisory bodies of the ILO, in particular the Committee of Experts on the Application of Conventions and Recommendations and the Special Committee of the
ILO Conference which annually examine in detail the extent to which there is compliance or otherwise, in law and practice, with the freely undertaken obligations that are consequent upon ratification.

8. It is neither possible, nor necessary in this paper to provide full details of all the observations directed by the Committee of Experts over the years since ratification to all the countries concerned, and of all the lengthy and often heated discussions that took place in the Conference Committee over these observations. Suffice it to say that the comments of the Experts were generally, and in the case of all the countries concerned, directed at Constitutional provisions, legislation or other regulations which involved serious limitations on the right of workers to establish organisations freely and without previous authorisation outside the existing trade union structure, and at the problem of the leading role of the Communist Party as regards the goals, objectives and activities of all social organisations, including the trade unions. This role, in the opinion of the Experts, was in contradiction with the concept of the independence of the trade union movement, an indispensable condition to enable them to defend and promote the interests of their members.

9. These criticisms were generally countered by Government arguments that legislation did not limit the number of organisations that could exist, nor was there any State intervention in the internal operations of trade unions. The Governments claimed that the workers themselves realised that the unity of the trade union movement was their most important achievement and that the existence of several organisations would be prejudicial to the workers’ struggle for their rights. As for the leading role of the Communist Party, the counter-argument emphasized that the relations between the Party and the unions did not affect the application of the Convention, the relationship being of a political and not a legal nature. Moreover, the Party and the trade unions, having common objectives, the role of the Party, as the historic guide of the trade union movement, was to increase the role of the trade unions in all spheres of activity without the Party having to exercise trade union activities.

10. In more general and political terms, the members of the Committee of Experts from the then socialist countries dissociated themselves from the comments made by the Experts concerning the U.S.S.R. and the other socialist countries. They took the view that, in a world characterised by the existence of different social, economic, political and legal systems, the provisions of universal international Conventions, which are generally democratic in their social nature, may give rise, in their application, to internal legal provisions which may equally apply under a capitalist system and under a socialist system. It followed, they argued, that the social realities resulting from the application of International Labour Conventions might be different in capitalist countries and in socialist countries, while in both cases these realities might be in conformity with the Conventions. This was particularly true, they added, for Conventions which dealt with the fundamental principles and structures of existing social systems, such as Convention No. 87. Essential instruments, such as Conventions Nos. 87 and 98, and others dealing with fundamental human rights, could not be examined in isolation from the historical development of a given society, the development of its institutions, the form of its trade union activity, and, in general its socio-economic and political circumstances.
11. These arguments were countered by the Experts who stated that they had never ignored the fact that the social realities existing in countries based on different social and political systems, although differing from one another, might be in conformity with particular ILO Conventions. Divergencies between national legislation or practice and a ratified Convention might, however, occur in countries belonging to any of these systems. The Committee, however, in accordance with its mandate, had noted the various political, economic and social conditions existing in different countries and, irrespective of different systems prevailing in these countries, had examined, from a strictly legal point of view, to what extent ratifying countries gave effect, in law and practice, to the obligations deriving therefrom and which were binding on them. The Experts’ comments were based on a uniform application of an approach which it considered to be the only objective one possible.

12. It was against this background that special procedures were engaged in the ILO against the Government of Poland following the receipt of a formal complaint submitted, under article 26 of the Constitution of the Organisation, by delegates to the International Labour Conference in June 1982. This complaint alleged that Conventions Nos. 87 and 98 had been infringed as a consequence of the measures taken by the Government against the trade union movement -- principally against Solidarity -- following the proclamation of martial law in Poland on 13 December 1981. In particular, the allegations related to the suspension and the dissolution of the unions and the restrictions imposed on the activities of trade unions by new legislation, as well as to internments of trade unionists and measures of anti-union discrimination. The complaint was referred, in May 1983, to an independent Commission of Inquiry which submitted its report in May 1984.

13. In the context of an examination of the present industrial relations situation in the countries concerned it is interesting to recall a number of the conclusions reached by the Commission of Inquiry in the case of Poland since they recall and emphasise certain of the basic precepts on which tripartism and the exercise of freedom of association must inevitably rest.

14. Referring to the question of the political activity of trade unions the Commission observed that this is invariably a very delicate issue. Though it is obvious that the activities of trade union organisations must, in the first place, concern the occupational interests of their members, their activities cannot be confined to such matters in a strict and narrow sense. The choice of policies, particularly in economic affairs, has consequences for the situation of workers in general. Trade unions must, therefore, be able to express their view on the economic and social policy of the Government, since the fundamental aim of the trade union movement is to ensure the development of the social and economic well-being of workers.

15. The Commission of Inquiry, however, indicated that there have to be limits to the inevitable interplay between social and political questions. These limits are stated in the resolution concerning the independence of the trade union movement, which was adopted by the International Labour Conference in 1952. They concern both the action of Governments and that of trade unions. On the one hand, Governments should recognise that the value of the cooperation
of trade unions in carrying out their economic and social policy rests, to a large extent, on the freedom and independence of the trade union movement, which the Governments should not, therefore, attempt to transform into a political instrument. On the other hand, the trade unions should seek to ensure that any political action that they may think it proper to undertake to advance their economic and social objectives should not be of such a nature as to compromise the continuance of the trade union movement, irrespective of political changes in the country. For the trade unions to be able to play this part positively and constructively, and for their contribution to be as useful and convincing as they would wish, their participation must take place in a climate of freedom and security. This means that, where trade unions feel that they do not enjoy the basic freedoms indispensable for carrying out their purposes, they should be entitled to demand the recognition and exercise of these freedoms and their claims should be considered to form part of legitimate trade union activity.

16. As regards the suspension and dissolution of the existing trade union organisations -- which the Commission found to have been an unequivocal violation of Convention No. 87 -- the Commission pointed out that the act of suspension and dissolution inevitably raised the question of administration and subsequent devolution of the funds and property of the organisation's affected by these measures. Before the coming into force of the Trade Union Act of 1982, the property of the organisations had been managed by State-appointed administrators with the mandate of ensuring their maintenance and preservation. After the cancellation of the registration of the trade unions, the property of enterprise unions was administered by the heads of the undertakings, who then transferred them to the new trade unions set up under the Act, as and when the statutory executive bodies of these new unions came into existence. The property of higher-level organisations (central organisations and branch unions) was transferred to newly established federations when these came into existence.

17. The Commission of Inquiry recalled that, in accordance with ILO jurisprudence concerning the devolution of the property of dissolved trade unions, this property should be temporarily placed in trust and finally distributed among the members of the dissolved organisation or transferred to the organisation that succeeded it. This last expression, however, was not to be taken to mean the unions that, in fact, simply took over from the dissolved trade unions, but rather those that pursued the aims for which the latter were voluntarily established and pursued them in the same spirit.

18. In the case of Poland it was necessary for the Commission to determine whether the new trade unions constituted the successors to those workers' organisations that existed during the previous period. The Commission found, from all the available evidence, that Solidarity was still, in practice, carrying on activities throughout the country on a continuing basis; these activities had not been disowned by the bodies or by most of the persons responsible for directing the organisation when it existed legally. The mere recognition of this fact showed that the leaders of Solidarity did not see their own reflection in the directions and tendencies that had taken shape in the new trade unions. The Commission, accordingly, concluded that the new
unions could not be considered to be the true successors to the unions that were formerly affiliated to Solidarity, which implied that the system for the devolution of the assets of the dissolved organisations adopted by the Government was not in conformity with the principles of freedom of association in this regard.

19. Also of interest in this case is the stance taken by the Commission of Inquiry in regard to the question of dismissals of workers, having regard to the protection afforded by article 1 of Convention No. 98 which provides, inter alia, that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". The Commission had, therefore, to determine whether the grounds on which the measures were taken against the workers were concerned with their trade union membership or activity and, if so, whether the guarantees and remedies provided in law and practice might be considered adequate.

20. In this connection, the Commission could not affirm, on the basis of the information received, that all the dismissals or other measures taken constituted acts of anti-union discrimination. The Commission stated that it could not overlook the particularly difficult circumstances faced by the Polish economy at the time, which undoubtedly justified certain measures of adaptation. Nevertheless, the extent of the dismissals that took place and above all the large number of active members and leaders of Solidarity who were affected by these measures showed that in many cases, the trade union activities of the persons concerned must have been a decisive factor in their dismissals.

21. Detailed comments on the newly-adopted Trade Union Act of 8 October 1982 were also made by the Commission. Under transitional provisions only one trade union organisation could operate in an undertaking until 31 December 1984 (a restriction which was later extended indefinitely), thus conflicting with Convention No. 87 which requires that trade union pluralism must at least be a possibility in all cases. The Commission also concluded that the Act imposed undue restrictions on the right to strike by, inter alia, requiring the prior agreement of e.g. a federation to which it is affiliated before a first-degree organisation could call a strike, and by establishing a very long list of essential services in which strikes would be prohibited. The Commission recalled, on this latter point, that the prohibition of strikes should be confined to essential services in the strict sense of the term, that is, those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Trade Union Act, on the other hand, specifically provided for the right to conclude collective agreements at the national level. To this, the Commission commented that the Act should unequivocally recognise the right to collective bargaining at all levels of economic activity, but at the same time noted that, under a new Act of 1984, providing for the conclusion of wages agreements under certain conditions at the level of the undertaking, a first step might have been taken towards this full recognition of the right to collective bargaining.

22. If I have dwelt at some length on certain aspects of ILO experiences with the countries of Central and Eastern Europe and the USSR, and, in particular, with the important case of Poland, it is because they illustrate
not only the type of ideological concepts and monolithic structures which made
democratic forms of industrial relations impossible, but also because they set
out some fundamental principles and concepts without which effective and
constructive industrial relations cannot exist. The centrally-controlled and
highly-bureaucratised systems prevented any real social dialogue and the
"social partners" lacked the autonomy that is essential for constructive
participation in the social and labour process. The economic and social
systems were thus deprived of the necessary impulse to ensure any kind of
dynamic development since there was no recognition of the inevitable divergence
of interests between the social partners. The ideology of "common interest"
meant that the overall objectives as regards the development of society and the
functioning of the economy were formulated by the Party, the trade unions’ and
the workers’ role being reduced to executing the commands of higher political
levels.

The Reform Process

23. Some attempt at recognising the need to involve the social partners in
the social process was made in the 1960s, especially by countries like Hungary
and Czechoslovakia which, at the time were engaged in economic reforms.
Certain forms of workers’ participation structures emerged and, at the same
time managers began to assume a greater role in the improvement of the economic
situation in the enterprise. In general, however, despite these changes,
labour legislation remained largely an instrument of State control over the
economy rather than an instrument for controlling the balance of interests
between the labour relations partners.

24. The negative effects of centralised planning in economic terms led, in
the mid-eighties, to a certain relaxation, at least in some of the countries
concerned, of the system and its methods of control. To a certain extent
enterprise autonomy was extended and workers’ participation, in the form of
works councils or assemblies were vested with various rights of control over
management and were given decision-making powers in some areas. Any evolution,
however, that took place was inadequate to prevent the economic degradation
that beset all of these countries and the eventual political revolution that
they have experienced since 1989.

25. The monumental political upheaval in the countries of Central and
Eastern Europe and the dramatic changes in the policies of the USSR, with all
actively seeking radical reforms in economic planning and a complete
transformation from a centrally-planned economy to one based on liberal market
principles, have inevitably necessitated a transformation in thinking as to how
this can be achieved. One basic and general realisation seems to be that the
changes sought cannot be achieved without greater political democracy and a
much greater degree of freedom and independence being accorded to those social
institutions, in particular workers’ and employers’ organisations.
26. The legitimisation of free and democratic trade union rights in Poland, long fought for by Solidarity, has come more rapidly and more easily to the other countries of Central and Eastern Europe as a result of the impact of the political and economic transformation process in these countries and the realisation that more democratic rights and pluralism are an essential concomitant to the success of this process.

27. This newly-found freedom has resulted in the restructuring of the traditional central unions whose bureaucracies have been forced to decentralise their operations along federal or regional lines and delegate decision-making powers and control to subsidiary bodies. The former national trade unions have generally declared their independence of the State and other political bodies and administrative authorities and have opted to concentrate on the defence of workers’ rights and interests. In the USSR, for example, the former national Soviet trade union organisation -- the All-Union Central Council of Trade Unions (AUCCTU) -- has reorganised and become the General Confederation of Trade Unions to which the "official" unions and any new ones, can voluntarily affiliate. New unions have indeed emerged, and are still emerging, such as the Association of Socialist Trade Unions of the USSR (SOTSPROF) a largely white-collar union, and the Confederation of Labour, consisting mainly of mining workers. In Hungary, the national organisation SZOT (National Council of Hungarian Trade Unions), has been transformed into the National Confederation of Hungarian Trade Unions (MSZOSZ) with approximately 2.6 million members. The second largest group is the Confederation of Autonomous Trade Unions, composed of former members of SZOT which did not join MSZOSZ; together, they claim membership of around one million. Alongside these unions there exists the Democratic League of Independent Trade Unions with a membership of approximately 200 000 and a group of independent unions which are not affiliated to the MSZOSZ, the most important of which is the National Federation of Workers’ Councils, although its numbers are insignificant. The Central Council of Bulgarian Trade Unions has been transformed into the Confederation of Independent Trade Unions with a membership of approximately 2 million. Of the newly-formed trade unions in Bulgaria the most important is PODKREPA (Support) which claims a membership of about 250 000. In Czechoslovakia, the trade unions have organised into two Confederations following the dissolution of the former communist Revolutionary Trade Union Movement (ROH) : The Confederation of Free Unions, with a membership of about 5 million workers, and the Confederation of Cultural Workers, with about 300 000 workers. A few other unions exist with no affiliation to either Confederation. The National Confederation of Romanian Free Trade Unions, with about 2.5 million members, is the successor organisation to the former General Confederation of Trade Unions, while the newly-formed independent organisation FRATIA is in the minority with about one million members. The traditional, former Party-linked trade union organisation (OPZZ) in Poland now claims a membership of some 5 to 6 million whereas Solidarity membership probably stands at around 2.5 million.

28. Despite, and to some extent because of this newly-found freedom and declared independence, enormous problems now confront the trade union movements in all countries concerned. Here, a distinction may be made between the newly-
formed independent unions and the former traditional unions which, although now independent, retain, in most cases, similar leadership structures and membership. Having been, for several decades the "transmission belts" of Government or Party directives and executors of policies laid down by the authorities, these organisations will not find it easy to define their new role and assume their new responsibilities. Nor is it yet evident that they have been able to divest themselves fully of political control or ideological influence. The future legitimacy of these organisations and their ability to maintain their memberships will depend, in the absence of Government or Party protection, on their ability convincingly to assume their responsibility to promote and defend the interests of their members. The total absence of such responsibility of these organisations in the pre-reform period, declining living conditions, rapidly increasing unemployment, and stagnating economic circumstances are all factors which could cause a rapid decline in the strength of these organisations. There are already signs that membership in these organisations is waning because of disillusionment of workers in their ability to seek any improvement in their conditions, the desire on the part of some workers to join the new independent unions, or the withdrawal of workers altogether from the unions.

29. One important advantage held by the newly reconstituted traditional unions is their continued access to the very considerable assets they acquired over the years prior to reform. The newly constituted independent unions, on the other hand, have virtually no property or other assets. The problem of the retention, or a redistribution of assets is already one which is causing discussion and considerable friction among the unions. Failure to resolve this crucial problem, or undue delay in doing so, will weaken the trade union movement as a whole and impede efforts to pursue their real mandate. On the other hand, the unfair or inequitable redistribution of assets will leave scars that will not be easy to heal. To date, it is only in Czechoslovakia and in Hungary that attempts to deal with the problem of the assets of the former official trade unions have been made. The Confederations and the independent unions in Czechoslovakia formed the "Property Union" which took over the assets of the former Revolutionary Trade Union Movement (ROH) prior to the dissolution of the previous trade unions. Still under discussion, however, is the question of the distribution of assets to individual unions. This is a matter that is the subject of much controversy. In Hungary, the newly formed MSZOSZ decided, in 1990, to distribute most of the assets among the trade union organisations that registered as members of the new Confederation. Those newly formed unions which decided to remain outside the Confederation were thus deprived of any share, and are now actively calling on the Parliament to ensure that they are given part of these assets. As regards the USSR, Bulgaria and Romania, little is yet known about claims to the assets of the former trade unions or the manner in which any such claims may have been settled. The new independent unions in these countries seem to be endeavouring to build up their own assets through membership contributions and any other means available to them in order to provide the services which they are actively seeking to ensure to their members.

30. Besides suffering from a serious lack of funds and other basic assets (office premises, equipment, etc.), the new independent unions are also hampered by lack of experience, especially in collective negotiations, lack of organisational ability and, to some extent, by ideological affiliation to
certain minority or opposition political parties which seek to gain and exploit the support of these unions. This, of course, is a delicate question which only the unions themselves can resolve. It should be for them, and them alone, to decide whether political alliances are at this stage beneficial to the promotion of their interests and those of their members.

31. These weaknesses and problems which beset the newly-constructed, or newly-formed trade unions are compounded by an excessive fragmentation of organisations of workers which is hardly conducive to the unity of expression and participation that is essential if workers’ organisations are to play an effective role, first in strengthening the trade union movement, its structures and policies, and secondly, in participating effectively in the economic and social life of their countries. The newly-found freedoms of the trade union movement, and the strength of the movement, if employed judiciously and responsibly, will constitute a vital element in the restructuring of the economies and the societies of these countries in general.

Employers’ Organisations

32. An even more immediate and urgent problem facing the countries of Central and Eastern Europe and the USSR is the establishment of independent organisations of employers. While in the pre-reform period certain types of organisations, for example, Chambers of Commerce or Industry or associations of cooperative management existed, these were State agencies responsible for the achievement of the economic plans of the Government and hence bore no relation to the kind of autonomous employer organisations that are not only known in, but vital components of, tripartite structures that exist in market economies. These State bodies were in no way distinct interest groups participating -- as they must in a market economy -- as independent actors in the social and economic life of the country. In the centrally-planned economies all enterprises, big or small, were State property and no legal basis existed to enable undertakings to function as autonomous units.

33. In the 1980s some progress was made, for example in Poland and Hungary, towards an increased liberalisation of employers’ organisations. However, it is only in the past two years that the possibility has existed for employers’ organisations, like workers’ organisations, to achieve the kind of independent status they require in order to fulfil their proper role in a new market economy system. While the situation of managers of large State-controlled and State-owned enterprises still remains unclear, the employers ranks will be swelled by the growth of new private undertakings and by the process of privatisation of existing industries and enterprises. For the time being the major problem for employers will be to what extent homogeneous relations can exist between groupings of employers who have established new enterprises and those existing bodies of managers of State industries or undertakings until such time as the latter are privatised or obtain a greater degree of independence from State control.

34. It is in Poland that the most encouraging progress has been made towards the establishment of a national organisation of employers which can act as a genuine counterpart to the other actors in the tripartite structure. In 1989 the Confederation of Polish employers was created. This comprised newly-formed
as well as some existing industrial establishments. The International Labour Organisation assisted in the process and the Confederation based its statutes on Conventions Nos. 87 and 98 which, it will be recalled, apply equally to employers and to workers. The Confederation, made up of about 90 per cent of State employers and about 60 per cent of private employers is now playing an active role not only in economic matters but also in the consultative process for the adoption of new legislation.

35. In Hungary and Czechoslovakia, on the other hand, although the former organisations, or Chambers of Industry or Commerce have been transformed into more autonomous entities, and a number of their employers’ associations created, attempts to create a more cohesive national structure have not yet come to fruition. It will be of crucial importance for the employers’ organisations in these countries to form structures that will enable them to fulfil their proper role as social partners. Meanwhile, in the USSR, Romania and Bulgaria, although the process of economic reform as well as legislative changes have given rise to a greater degree of autonomy for existing organisations and permitted the establishment of new associations of entrepreneurs, the basic concept of employers as autonomous and active partners in the industrial relations system does not yet appear to have taken root. It is not at all clear whether these organisations will be in a position to grasp the opportunities that now seem open to them to become real partners in the economic development of their countries.

36. It may be observed that, in general, there has been less progress in relation to representation of employers and their interests than in relation to the trade union situation. This represents a serious problem, since the establishment of an institutional framework representing employers’ interests is a major precondition for the development of an effective industrial relations system and economic development in any market economy system.

Collective Bargaining and Disputes Settlement

37. Article 4 of Convention No. 98 (The Right to Organise and Collective Bargaining Convention (1949), which has been ratified by the USSR and all the countries of Central and Eastern Europe) deals with one of the most important aspects of industrial relations, viz. voluntary collective bargaining. It lays down that “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective arguments."

38. This provision guarantees the autonomy of the bargaining parties and means that the Government must refrain from interfering in such a manner as to restrict such autonomy. Government interference in the collective bargaining procedure results, in particular, from restrictive legislation on collective bargaining matters and the effects of economic policy measures on the autonomy of the parties. This has led the supervisory bodies of the ILO to conclude that the exclusion from bargaining of certain matters relating to conditions of employment, the submission of collective agreements to prior approval before they can be applied, or enabling them to be declared void because they run
counter to the Government’s economic policy, are all incompatible with article 4 of Convention No. 98. On the other hand, these bodies have also added that it is only through a process of wide discussion and consultation by all the social partners at the national level that the parties to collective agreements should be persuaded to have regard voluntarily in their negotiations to major economic and social policy considerations and the general interest invoked by the Government. More specifically, on the question of wage negotiations it has been emphasised that where, for compelling reasons of national economic interest, a Government considers that it would not be possible for wage rates to be fixed freely by means of collective negotiations, any restrictions should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and that these should be accompanied by adequate safeguards to protect workers’ living standards.

39. It was impossible to apply these principles in systems where collective contracts and their content were strictly dictated by the State, where the parties did not enjoy any autonomy, where there was no divergence of interests between the social partners, and where the concept of bargaining simply did not exist. The collective contracts concluded in Central and Eastern European countries during the pre-reform period mainly indicated the remuneration systems and rates previously set by Government bodies after consultation with the trade unions. It was also through collective contracts that the management of the enterprise and the trade union committees exercised their right to decide on such matters as the use of material, the use of incentive funds, various social advantages and sports and cultural activities. Disagreements between management and the trade union committee concerning the contents of the collective contract were settled by State and higher trade union bodies.

40. As mentioned previously, a first step towards free collective bargaining was taken in Poland in 1984 with a limited extension of wage bargaining at the enterprise level. In Bulgaria, too, the 1986 Labour Code introduced provisions for the conclusion of collective labour contracts at the level of the "basic work collective".

41. Despite these developments, collective bargaining as it is understood and practiced in industrialised market economies, did not exist. Generally, the State continued to specify in a very restrictive manner the range of matters that could be settled through collective agreements, and these agreements were not the result of a true bargaining process between partners having divergent interests. The concept of "common interest" and the absence of autonomous trade unions and "real" employers rendered any bargaining process impossible.

42. There can be no doubt, however, that recent changes in Central and Eastern Europe and the USSR have resulted in some progress towards a freer system of collective bargaining. There is some evidence that State intervention in labour relations is gradually decreasing and that market mechanisms are playing an increasingly important role in the economy. The newly-acquired autonomy of the social partners has enabled them to express their divergent interests more openly. As a result there has been a natural increase in labour disputes, in an environment where the right to strike -- although not formally denied -- had never been recognised and where labour disputes settlement procedures were virtually non-existent.
While there remain major obstacles to free collective bargaining, new or proposed legislation in the USSR (Soviet Law on Enterprises, 1990, and Law on Collective Agreements), Czech and Slovak Republics (Law on Collective Bargaining, 1990) the new Hungarian Labour Code (under preparation) all endeavour to create a legal framework within which free bargaining will be possible. New elements in this legislation include a certain linkage between collective bargaining and national level tripartite coordination on social policies, wages systems and employment; an emphasis on enterprise (USSR) or sectoral (Hungary) level agreements, and the elimination of earlier directives stating what items could be included in the collective agreement.

The question of identifying the parties to the collective bargaining process and their representativeness remains problematic. While the employers still remain difficult to identify, workers, and in particular, the trade unions are grappling with the problems of representation of workers in a situation of trade union multiplicity and whether unions, or works councils elected by the whole collectivity should engage in bargaining, e.g. in the USSR and in Hungary. The unions, understandably, see in such a system of works councils an attempt to undermine their activities and even their legitimacy. Time and experience will demonstrate that the system of works councils and other forms of worker participation can only function effectively under very specific conditions and where there is no direct competition with trade unions as regards collective bargaining rights.

As already indicated, in the past collective labour disputes over rights and interests were generally resolved through non-institutionalised interventions by State, Party or higher-level trade unions. Poland, on the contrary, had, in 1982, enacted provisions (Trade Union Act) for conciliation and arbitration in relation to collective labour disputes and the regulation of strikes. Hungary, too, had arbitration labour Committees for the settlement of rights disputes at the enterprise level and a system of labour courts, but, by and large these institutions were, because of the social and political context, largely inappropriate for the settlement of major conflicts.

In Poland the provisions of the 1982 Law on collective disputes and strikes have now been replaced by new laws enacted in 1991 which seek to consider direct negotiations and mediation as pre-conditions to the right to strike. In the USSR, the Law for the Settlement of Collective Labour Disputes was enacted on 9 October 1989 placing emphasis on the conciliation and arbitration of collective disputes. This law represents an important advance in the democratisation of industrial relations, but it has so far failed to deter industrial action that would be considered illegal under the law’s provisions. Hungary and Bulgaria have also adopted, in 1989 and 1990 respectively, new legislation for the settlement of collective labour disputes.

Most of the recent legislation enacted in the countries concerned for the regulation of industrial conflict was prepared under the pressure of increased strike activity as a result of deteriorating living and working conditions. What is noteworthy, however, is the general absence of provisions for the settlement of labour disputes through a collective bargaining process with appropriate mediation and conciliation mechanisms. This provides a further indication that there is still a long way to go before collective bargaining is recognised as a vital component in the industrial relations system for the avoidance or settlement of labour disputes.
The right to strike is now widely recognised, although the laws regulating strikes contain many restrictions which considerably limit the legal exercise of this right. Strikes of a political nature are generally banned as well as those in "essential services", a term which, in most legislations of the countries concerned, is defined in a manner which makes strikes illegal in many sectors of the economy.

The transition to the market economy and the inevitable freedoms that such transition requires has led, on the one hand, to a steep and immediate decline in living conditions and, on the other, to the release of the powerful strike weapon which workers in these countries now have at their disposal. The large volume of legislation throughout Central and Eastern Europe and in the USSR to legitimise and regulate strike action indicates a clear recognition of the right to strike and at the same time the absolute necessity to ensure that the possibilities for economic recovery are not seriously impaired by the abuse of that right.

Over the years, the ILO supervisory bodies have developed a detailed body of jurisprudence on the complex question of the right to strike. While always firmly maintaining that it is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests, the ILO has nevertheless accepted that, in certain circumstances, this right can be curtailed, or even prohibited. This is true of public servants engaged in the administration of the State and in essential services in the strict sense of the term provided such a ban is compensated by the existence of adequate, impartial and speedy conciliation and arbitration procedures. A study of ILO jurisprudence in this highly complex area would enable the countries in question to adapt their legislation in such a manner as to regulate forms of industrial action without exceeding the limitations that are acceptable under generally recognised international principles. Even more urgent however, is the need to reduce the propensity to have recourse to strike action. This can only be ensured by the creation of appropriate mechanisms in which agreements can be reached through collective bargaining, and in which disputes can be settled through mediation, conciliation or independent arbitration procedures.

The regulation of strikes and the search for appropriate methods and procedures for their avoidance is not a problem that is unique to the countries of Central and Eastern Europe. Even in countries with the most sophisticated industrial relations systems new forms of collective bargaining and procedures are being tested with a view to avoiding or resolving disputes. It is important, however, that such methods are the fruit of concerted efforts by all the social partners and that they enjoy general confidence. Responsible trade unionism can only develop in the context of an institutional framework which provides for procedures in which the unions have confidence and in which they can fully participate.
The Role of the State

52. In the dramatic economic circumstances facing the countries of Central and Eastern Europe it is only to be expected that the State will continue to play a major role in the field of industrial relations for some time to come. It has already been seen that States have reacted very rapidly to the transition by enacting legislation in an attempt to define the respective roles of workers and employers and the right to strike.

53. Another response of the State to the economic situation has been, in a number of the countries in question, to integrate organised groups of workers and employers into national tripartite bodies with mostly consultative functions in the fields of labour, social and economic policy. In Hungary, for example, the new Government has restored the former tripartite National Council for the Reconciliation of Interests (re-named the Council for the Reconciliation of Interests), widened its composition to include all the major trade unions and employers’ organisations and extended the areas over which it has competence. Similar institutions have been established in the Czech and Slovak Republics, Bulgaria, Poland and Romania. These bodies are concerned, in principle, with achieving congruence between the macro-economic goals of State policy and those of the major collective organisations. In practice, they have largely concerned themselves with wage and price-fixing, privatisation issues, unemployment and living standards. At least in some of the countries the absence of collective bargaining at the enterprise or branch levels has caused problems at these levels to be elevated to the national bodies for discussion and resolution. It may generally be said that the weakness of workers’ and employers’ organisations enables the Governments to play a preponderant role in these national institutions.

54. As the immediate successors of monolithic States which had total power and control over society as a whole the new Governments of these countries are likely to continue to exercise a dominating role in the industrial relations field at least until such time as workers’ and employers’ organisations attain the cohesiveness and strength to become viable social counterparts. This, in turn, places considerable responsibility on governments to ensure that their interventions are not seen as arbitrary and that they are conducive to the strengthening of a labour relations system in which workers’ and employers’ organisations can develop into responsible and effective social partners. In addition to involving these organisations in the preparation of legislation on labour matters and in macro-economic policies, governments should develop their capacity to act as third-party regulators promoting a legal framework for union-management interaction, particularly in collective bargaining, provide state services for conciliation, mediation and arbitration for the settlement of disputes and, in its capacity as largest employer, influence in a positive manner the pattern of industrial relations by its own behaviour and example.
Concluding remarks

55. As indicated at the outset of this paper it was not the intention to present a comparative labour relations study of the countries under discussion, but rather to identify certain problems or denominators which are common to all of them and to consider how these might best be addressed. In the area of industrial relations there is an evident commonality in terms of the problems faced by each of these countries, although these problems are in no way identical. Nor are there quick, easy or uniform formulae available for the solution of these problems. Diversities of culture, of history, of temperament will all play an important role in the development of efficient and viable industrial relations systems in these countries. At this stage the countries of Central and Eastern Europe, and the USSR could benefit from comparative studies of systems of other industrialised market economy countries, but it would be hazardous indeed to try to adopt or piecemeal transplant industrial relations practices or procedures from elsewhere without careful consideration being given to the context into which they are being translated. Industrial relations phenomena reflect the characteristic features of the society in which they operate. If follows that because a practice may work well in one country, there is no guarantee that it will do so in another, especially if it conflicts with indigenous traditions and social values. This is particularly true for collective bargaining institutions and procedures which, because of their close links with the structure and organisation of political and social power in any given environment, cannot necessarily be expected to function adequately when borrowed from elsewhere.

56. The risk of adopting laws or practices from a different environment is all the greater at a time when these countries are invaded by large numbers of specialists offering technical assistance, and by multinational enterprises whose domestic labour relations practices would, perhaps, if implanted, facilitate their operations. The governments of the transition countries will have to proceed with great caution in this area and avoid adopting any systems or practices that could weaken indigenous industrial relations and damage any possibility of attaining a reasonable degree of social consensus through strong tripartite participation.

57. Open and constructive dialogue between the various representative elements and the public authorities in the countries of Central and Eastern Europe and the USSR is essential to an effective recovery of economic activity and a normalisation of the general conditions of life in these countries. The fact that they have all requested, and are receiving, technical assistance in the field of industrial relations from organisations such as the International Labour Organisation is a positive sign that Governments appreciate the importance, and even the urgency, of developing and promoting sound labour relations through strong tripartite structures. It will be for the unions and employers of these countries to make corresponding efforts to become strong, mature and motivated actors in society. For the trade unions, in particular, the dilemma will be to what extent they can reconcile support for Government initiatives and policies for the stabilisation and improvement of the economy
with action they consider essential for the defense and promotion of their members’ interests. For employers the problem will be one of assuming their responsibilities and organising their structures. Despite the unfavourable economic climate, the new freedom which workers and employers now enjoy provide opportunities which, in the interests of society as a whole, it is urgent for both parties to exploit.