

Perhaps a complete study would reveal even more clearly that no single technique has been perfected for the revision of all treaties, either bilateral or multilateral. The perfection of such a single technique seems less likely in view of the wide differences in subject-matter and in the relative weight and duration of obligations imposed. Article 19 of the League Covenant (recently referred to by an Austrian publicist as "positive law" embodying "what remained" of President Wilson's ideas on this subject after his failure to get more specific proposals accepted at Paris)⁵⁷ hardly provides a formula for use in cases of normal modifications. As to other cases, the efforts made by Bolivia and China before the League Assembly, and the result of these efforts, suggest some substantial difficulties. The kind of unanimity in the Assembly required for operation of the plan, the possibility of use against some treaties to the exclusion of others⁵⁸ or of invoking the article to secure a recommendation as to part of a treaty only, the precise effect of a recommendation—these are among the matters which do not seem to be set at rest by the accumulating literature on the Covenant article.

Collectively, the revision clauses accepted by Great Powers during the post-war years seem to reveal some tendency toward further distinction between "fundamental" and detailed, technical regulations, and toward facilitating the changing of the latter. They further show that new international machinery of the post-war period, if it has not been employed directly for the purpose by some such plan as that of Article 19 of the Covenant, has frequently been regarded as a potential agency for assisting toward such changes. Not all treaties require revision clauses, since some of them are executed and therefore "spent" soon after their making. Some distinctive techniques for remodeling multilateral instruments, such as labor conventions,⁵⁹ have not been in use for a sufficient length of time to justify generalizations as to their adequacy. Finally, the post-war period has seen, not a relinquishment of the rule of *pacta servanda sunt*, but at least some evidence of a realization that *pacta*, if they are to be really effective, should be consistent with actual conditions, and should thus reflect the continuing will of party states.

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Internationalism in Current American Labor Policy. It has long been recognized by students of labor economics that a high standard of living

⁵⁷ Kunz, *loc. cit.*, p. 641. Cf. Tseng Yu-hao, *The Termination of Unequal Treaties in International Law* (1931).

⁵⁸ See, on this point, Paul de Auer, "The Revision of Treaties," *Transactions of the Grotius Society*, XVIII, 155-174 (1933).

⁵⁹ Cf. Jenks, *loc. cit.*

has definite international implications. Since early in the nineteenth century, the advocates of labor reform have attempted to stimulate international action which might bring about a simultaneous elevation of the condition of the workers in order to avoid the use of labor as a factor in competition. For nearly a century now, the international treaty has been pressed as the most suitable means of avoiding competitive disadvantage as a result of social changes, and the International Labor Organization, founded by Part XIII of the Treaty of Versailles, is the fruit of this agitation.¹ It is natural, therefore, that any country seeking to maintain high labor standards should welcome ultimately the possibility of international action in defense of its effort.

While it has been a long-standing policy of the United States to encourage an elevated standard of life for its working population, the international aspects of this attitude have not until recently been clearly faced. With the advent of the administration of Franklin D. Roosevelt, a marked change took place. It is clear that the New Deal has as one of its objectives the restoration of the standard of living. In this, it is not a new departure; but in contrast with the post-war Republican administrations, the "recovery program" has attempted to meet the logic of interdependence. Just as the President recognized that interstate competition within American industry must be eliminated in so far as the conditions of labor are involved, so he assumed that the United States should collaborate as far as possible with international agencies attempting to do the same thing on a universal scale. The United States as a high standard country has everything to gain by helping to raise the standard in other countries in which a distinct advantage is or might be gained by low labor costs.²

On June 6, 1934, at the President's request, Senator Robinson of Arkansas introduced a joint resolution authorizing the President to "accept membership" in the International Labor Organization. This resolution was passed finally on June 16, during the closing days of the Seventy-third Congress. The International Labor Conference was then approaching, in Geneva, the close of its eighteenth session. It is natural that the passage of the joint resolution should have created great excitement in Labor Organization circles. It was hoped that presidential action applying for membership would be completed before the end of the Conference, though it became apparent that this would not be done. The election of the Governing Body was postponed on several occasions during

¹ For a brief sketch of the Organization by the author, see *Encyclopaedia of the Social Sciences*, Vol. VIII, pp. 164-167. During 1931-32, the author studied the Organization as holder of a fellowship of the Social Science Research Council.

² See Joseph H. Willits, "Possibilities of United States Collaboration with the International Labor Organization," *Annals of Amer. Acad.*, Vol. 166, p. 168 (Mar., 1933).

the Conference in the expectation that the United States, as one of the leading industrial powers of the world, might be elected. Finally, however, the body was elected without the United States, though with the understanding that a government, a workers', and an employers' representative would retire from the body in favor of the United States should that country complete its membership. The Conference, moreover, passed a resolution inviting the United States to become a member of the Organization, giving it the assurance at the same time that it should be bound only by the obligations provided for in Part XIII, and that the Governing Body would complete with the United States the *modus operandi* of membership. In both the congressional and Labor Conference resolutions, it was expressly stipulated that the United States would assume no obligations under the Covenant of the League of Nations.³ On August 20, 1934, the acceptance of membership in the International Labor Organization on the part of the United States was conveyed to the Director of the Labor Office by Mr. Prentiss Gilbert, American consul in Geneva. The details of our membership will, no doubt, be worked out before the end of the present year.

This development in American relations with the Organization was foreshadowed by other events. In 1931, Miss Mary Anderson, of the United States Department of Labor, was instructed to follow the proceedings of a Labor Conference, but on the eve of the Conference and after her arrival in Europe these instructions were cancelled. No adequate explanation of this apparent lack of harmony between the then Secretary of Labor and other members of the national administration has been given. However, in 1933 Miss Anderson headed a full delegation of four observers who were sent to Geneva to participate in the Conference. Observers were sent also to the Conference of 1934. After the assumption of power by the new Democratic administration in 1933, it became known that both the President and the Secretary of Labor, Miss Frances Perkins, were in favor of closer collaboration with the Labor Organization. The policy of sending observers was the first result of this change of administrative attitude, but it was also assumed that if some way could be formulated by which the United States might enter the Organization, it would be acted upon by the national government.⁴

³ For the text of the joint resolution, see *Congressional Record, Senate*, June 13, 1934, p. 11681. The resolution passed by the Labor Conference is given in *International Labor Conference, Provisional Record*, 1934, No. 29, p. 464. See *ibid.*, pp. 458 ff., for the discussion of American membership. John L. Lewis, the American workers' observer in 1934, invited the director of the International Labor Office to attend the 1934 convention of the American Federation of Labor, and the director tentatively accepted. *Ibid.*, p. 469.

⁴ For further details of American cooperation with the Organization during recent years, see *I.L.O. Year-Book*, especially of 1933, pp. 5-6.

A number of difficulties of a legal and political character emerge as a result of the joint resolution of Congress and the action of the Labor Conference. The normal method of entry into the Organization is through the League of Nations by the ratification of the Treaty of Versailles or those parts of it which establish the League and the Organization. A somewhat less regular procedure would be the ratification alone of Part XIII, by which we would enter the Organization as one of the original signatories of the Treaty. But it was evident that the Administration had no desire to create a political storm by submitting Part XIII to the Senate for ratification. Yet something more than informal action would be necessary if the United States was to expect to become an active member of the Organization. The budget of the Department of Labor might stand the expense of sending observers, but it would not, without special provision, carry the cost of an ordinary membership. Some approval by Congress was, therefore, necessary to enable the government to include without question in the national budget an American contribution to the Labor Organization. This explains in part, no doubt, the policy adopted by the Administration of requesting the introduction of a joint resolution permitting the President to accept membership. Certainly, the Peace Treaty does not contemplate membership being attained by anything short of ratification of the relevant sections of the Treaty.

Further difficulties may be found in the assumption by the Administration of a rather complete autonomy of the Labor Organization in relation to the League. Here is a legal issue which has been discussed from the foundation of the Organization and the League in 1919 and 1920. It can hardly be said that any satisfactory solution has been found. To the present, at least, the attitude of the Secretariat has been that the Organization is an integral part of the League system, though having an independent status on certain matters. The budget of the Organization is passed finally by the Assembly of the League, and the Supervisory Commission was more than ordinarily aggressive in 1933 in its criticism of the principle of Labor Organization autonomy.⁵ Osusky, the chairman of the

⁵ See *Official Journal of the League of Nations*, Special Supplement, No. 118 (1933), p. 79; C. W. Pipkin, "Relations with the League of Nations," *Annals of Amer. Acad.*, Vol. 166, pp. 124 ff. (Mar., 1933). See also James T. Shotwell (ed.), *The Origins of the International Labor Organization*, 2 vols. (New York, 1934). This significant work is colored by the desire of the contributors to show the independence of the Organization from the League in order to pave the way for American membership in the former. Practically no attention is paid to the bonds which unite the two organizations. For instance, on p. xxv of Vol. I Professor Shotwell significantly omits any mention of the important part played by the members of the Council of the League in the ratification of amendments to Part XIII. In any case, freedom of the Labor Conference to propose amendments to Part XIII is not important if the ratification must be by members who are in turn members of the League.

Commission, remarked that the question of autonomy had become one of routine discussion, but that he must insist that the Commission has duties as to both the League and the Organization. He admitted that the Governing Body of the Labor Office might make those duties more difficult to perform. It is probable, however, that the prospect of American membership in the Organization will be so welcome to the League that any such denial of Organization independence will be carried discreetly behind the scenes.

In the United States, the emphasis on the autonomy of the Organization is quite understandable. It was necessary to prevent the League issue, of burning memory, from being discussed if we were even to think of entering the Organization. The report of the House Committee on Foreign Affairs is undoubtedly too optimistic as to the independent character of the Organization, since it is stated that the "International Labor Organization has no essential connection with other international bodies."⁶ In order to avoid a discussion of the League, the case for autonomy has been over-stated. The congressional resolution notes that other states have joined the Organization without joining the League, but this overlooks the fact that the admission of Germany and Austria occurred under special circumstances and that the Labor Office legal advisers are in no wise agreed that there is an unimpeachable right to admit a state as a new member. The American resolution is quite correct in noting that "the United States early recognized the desirability of international cooperation in matters pertaining to labor and took part in 1900 in establishing, and for many years thereafter supported, the International Association for Labor Legislation." But the implication in the material submitted to the House committee that the present Organization is a *mere continuation* of the organization of 1900 is hardly to be sustained in sober argument. The present Organization is, and remains, a creation of the Treaty of Peace and is, further, an essential department of the League of Nations.

The International Labor Conference and the Labor Office were, likewise, disposed to welcome a solution which would not involve squarely facing the issue of whether there is any power legally to admit a new member of the Organization. The controlling article of the Treaty is 387, which states that "the original members of the League of Nations shall be the original members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization." From one viewpoint, this article is positive, in that it provides that the members of the League shall be members of the Organization. But otherwise it is not provided definitely that only members of the League may be members of the Organization. Austria and Germany were

⁶ See 73rd Cong., 2nd sess., House Rep. No. 2006. In this connection, see the letter of Miss Perkins appended to the report.

admitted to the Organization by the 1919 Labor Conference in Washington, D. C., but since then no members have been so admitted. Conservative opinion holds that these two states became members in virtue of the conditions of negotiation of the Treaty, and not because of any particular power of the Labor Conference. The Conference has had the opportunity of admitting new members, but it has avoided any action. The withdrawal of states from the League has presented further problems, since Brazil has remained in the Organization though it retired from the League and Japan has likewise elected to stay with the Labor Organization. Germany has announced her withdrawal from both the League and the Organization. Had the Organization been willing to admit members, it is likely that Egypt would be a member by this time.⁷

The closest approach to an opinion on the question arose in the Danzig case, which was heard before the Permanent Court of International Justice. The Free City of Danzig, whose foreign relations are conducted by Poland, wished to become a member of the Organization. After considerable discussion, the question was submitted to the Permanent Court for an advisory opinion. The primary effort of the Labor Office was to prevent a discussion of the question of whether the Organization might admit Danzig. Rather, the issue was, for the Office at least, whether Danzig had such an international status as to make her capable of being a member. The advisory opinion, which was rendered in August, 1930, held by a majority vote that under the existing arrangements the Free City could not become a member of the Organization. The majority of the Court declined to pass specifically on the power of the Organization to admit a new member. However, Judge Anzilotti, in an individual opinion, declared that there was "no doubt that the intention of the parties to the Treaty of Versailles was that membership in the League of Nations and that of member [sic] of the International Labor Organization should coincide, and to prevent a state or political community from becoming a member of the International Labor Organization without at the same time being a member of the League of Nations."⁸

Sufficient information has been given to show at least that there are some legal questions to be raised in connection with the recent developments in American relations with the Organization. The data given make

⁷ For information on the problem of the admission of Austria and Germany, see *Official Bulletin* of the International Labor Office, Vol. I (1923), pp. 568 ff. Professor Manley O. Hudson, who was legal adviser to the Conference in 1919, presented the strongest argument against the right of the Conference to admit members. He concluded: "The conclusion must be that membership in the Labor Organization depends upon membership in the League of Nations as a whole . . ." *Ibid.*, p. 581. See also International Labor Conference, *Final Record*, 1919, p. 211, for Professor Hudson's opinion.

⁸ *Official Bulletin*, XV (1930), 89. For data on this case, see *ibid.*, pp. 71 ff.

it clear that the policy of the Administration of seeking some kind of informal membership is in accordance with the desires of the Labor Office. But it is clear, likewise, that legal considerations will not be urged against the extent of cooperation proposed by the United States. The exact status of our acceptance of membership in the Organization will be difficult to assess. Perhaps it is not too much to say that it will be *sui generis* in the annals of the League. Membership in the League System is supposed to be attained by the ratification of the international instruments which create this international union. Some advance in analysis may be made if we compare the basis of our membership with that of the executive agreement; only in this case it is an executive agreement between the President and a part of a comprehensive international union which may be designated as the League of Nations System.

As a member of the Organization, certain duties will fall upon the United States. In the first place, we shall be bound to provide an annual financial contribution to the support of the Organization, which will be determined by the Governing Body in general agreement with the principles of League finance. Secondly, we shall be under the obligation of sending each year to the Labor Conference a complete delegation composed of two government delegates, a workers' delegate chosen in consultation with the most representative organization of workers (probably the American Federation of Labor), and an employers' delegate selected in the same manner. There may be more difficulty in determining the most representative employers' organization in the United States. Thirdly, we shall be under the Treaty obligation of submitting within a limited time (at most eighteen months) the decisions of the Labor Conference to the competent national authority. On those matters upon which Congress has jurisdiction, the draft conventions and recommendations will be considered by the national government; on those which fall within the power of the states, they must be submitted to the state governments. The importance of the permanence and constitutionality of the "recovery program" in this connection needs little elaboration. The establishment of a labor standard by the code system would surely give sufficient ground for the ratification by the national government of an international labor convention which normally might fall within the jurisdiction of the forty-eight states. Article 405 of the Treaty, however, provides that in federal governments labor conventions coming within local jurisdiction may be treated as non-ratifiable recommendations.⁹

Within the Organization itself during the past decade certain developments have been appearing which have prepared it in a real sense for future American participation. One may regard these tendencies as the

⁹ See my "International Labor Relations of Federal Governments," *Southwestern Political and Social Science Quarterly*, September, 1929.

gradual overcoming of the Peace Conference stamp of regionalism, a regionalism which made the Organization primarily European in attitude, personnel, and in the selection of subjects for Conference discussion. The Labor Office is located in Europe, and the meetings of the Governing Body, the Conference, and committees of experts with few exceptions have taken place on the Continent. The staff of the Labor Office is predominantly European, and of the European elements the French and the British have the largest number of posts and the most important ones. Research technique has been oriented toward the exploitation of European experience, and the experts consulted by the Office have been, for the most part, Europeans. European employers have dominated the employers' group in the Conference, and the leaders of European trade unions have directed the policy of the workers in the Organization. To many over-seas representatives, the Organization has been a European institution in every way except in the much more equal distribution of the financial burden of supporting the League System.

The over-seas representatives have waged a constant warfare on the prevailing distribution of influence. They have demanded a fair distribution of the staff of the Office, not so much to secure additional jobs for their nationals as to assure that the non-European point of view will find satisfactory expression. They have insisted that European industrial and labor experience is not always valid universally, and that draft conventions and recommendations framed for world-wide application must be drawn up with a full consciousness of the experience of the non-European world. Somehow this continuous demand for universalism in the Organization made little headway until about 1932. One reason for the change that can be perceived since that time may be the more cosmopolitan outlook of the present director of the Labor Office, H. B. Butler, who succeeded Albert Thomas in the summer of 1932. Butler has been a careful student of North American industrial problems, and he understands the labor movement in this country. He is a product of the British civil service rather than of Continental parliamentary socialism. But in addition to this, the non-European states were becoming more coherent in their demands. Not only did they propose constitutional changes of great importance, such as fewer sessions of the Conference and Governing Body, but made demands of less significance, such as for more over-seas personnel on the staff, more missions from the Labor Office to over-seas countries, more experts chosen outside of Europe, a greater length of time between various stages in the preparation of draft conventions and recommendations, and a fairer distribution of the cost of traveling to and from Geneva. They asked, likewise, that just as European labor problems had in fact received regional treatment there should be regional treatment of the labor problems of other areas, such as those faced by Asiatic countries.

Definite commitments have now been made by the Director, and some progress has been realized toward satisfying the wishes of non-European countries, among which, of course, the United States must be numbered. The Director has given assurances that in making further additions to the staff the predominance of the European countries will be cut down, and that South American nations in particular will be provided with more representation. A more positive policy of investigation on the spot in labor matters concerning non-European countries has been adopted, and a larger number of over-seas technical experts have been placed on the research committees of the Office and Governing Body. Furthermore, the League is urged to consider the question of the equalization of traveling costs incurred in attending the meetings of the Organization.¹⁰

One of the most significant recent advances toward giving the non-European members a more important influence in the Organization occurred in June, 1934, when an amendment to Article 393 finally came into effect. This proposal had been pending since the Conference of 1922, but while the great majority of the members had ratified it, there was prolonged difficulty in securing the ratification of the members of the Council of the League. As the membership of the League Council has changed continuously, the Organization has for several years been just short of the adoption of the amendment. The new Article 393 provides for an increase in the membership of the Governing Body from 24 to 32 persons, 16 representing the governments, eight the employers, and eight the workers. Of the 16 persons representing the governments, six must be from non-European states, and two employers' and two workers' representatives must be from extra-European members. The Governing Body was elected in 1934 on the basis of the new provisions in the Treaty.¹¹

¹⁰ Most of the information on the over-seas problem appears in the *Minutes of the Governing Body*. See Sixtieth Session, October, 1932, pp. 65, 93, 142-44; Sixty-first Session, February, 1933, pp. 19 ff., 85 ff.; Sixty-third Session, June, 1933, pp. 270 ff.; Sixty-fourth Session, October, 1933, pp. 375-76. In the autumn of 1933, a special section was created in the Labor Office to deal with non-European countries, the present head of which is Mr. Mack Eastman, who is one of the Canadians on the staff. During the Seventeenth Session of the International Labor Conference in 1933 there was a special meeting of the representatives of over-seas countries, who expressed at the time particular interest in the equalization of the cost of sending delegates to Geneva. There was also a special meeting of the delegates from Latin American states. *Ibid.*, pp. 498-499. On the question of the reorganization of traveling expenses, note International Labor Conference, *Provisional Record*, 1934, No. 25, p. 343. As an additional concession to non-European countries, the period between the establishment of the agenda and the meeting of the Conference was lengthened in October, 1932. See *Minutes of the Governing Body*, Sixtieth Session, Oct. 1932, pp. 61-62.

¹¹ For the text of the new article, see International Labor Conference, *Provisional Record*, 1934, No. 8, Appendices, p. I.

The evidence so far given indicates that progress is being made toward a genuine *rapprochement* with the over-seas countries. Despite the withdrawal of Germany from the Organization and the consequent strangulation of the movement toward ratification of conventions in Europe, the year 1933-34 was one of the most important in the whole history of the Organization in this respect. Eighty-one new ratifications were deposited with the Secretary-General of the League in the year ending in March, 1934; but even more significant is the fact that seventy-four of these came from Latin American members.¹² From the American point of view, the most gratifying development is the great influence which the experiments under the present Administration are having upon the European industrial mind. The *Report of the Director* to the Labor Conference in 1934 shows the importance to the program of the Organization of current American economic changes. When the last Conference refused to pass the proposed draft conventions providing internationally for the forty-hour week in commerce and industry, one of the leading workers' delegates declared that these standards would yet be adopted under the pressure of the United States as a new member of the Organization.¹³

If the world is moving toward economic planning, the policies of the United States, if permanent, will certainly find support from the Labor Office, some of the governments, and the workers' group in the Organization. Never in the history of the Organization has American industrial philosophy and attitude been more akin to that of the Organization than under the present program of national industrial and agricultural recovery. While the United States will, in all probability, resist the tendency of certain European powers to make the Organization an instrument for fostering emigration from Europe, on most questions before the Conference it will not be difficult for this country to give support and also to draw benefit from European experience in the long struggle to conquer the economic maladjustments of the present era.

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¹² International Labor Conference, *Provisional Record*, 1934, No. 16, p. 207.

¹³ *Ibid.*, No. 30, p. 498.