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The Enforcement of International Labor Standards

By Francis G. Wilson

THOSE representatives in the Peace Conference of Paris in 1919 who desired that a League of Nations System should be created which would be a vital superstate, found that they had assisted in creating an agency of international coöperation rather than an international sovereignty. The illusion that international coercion might be used was no doubt produced by the war-befuddled state of diplomacy. Fortunately, however, the provisions now found in the Covenant of the League of Nations and in Part XIII of the Treaty of Versailles are not tainted with superstate conceptions. The Treaty of Peace is perfectly compatible with the historic doctrines of international law to which the United States, along with the other members of the family of nations, has long adhered.

Voluntary Nature of Action on Conventions

The fundamental premise that the International Labor Organization is an instrument for carrying on social coöperation between states must condition the enforcement of ratified international labor conventions. If anything, the technique of coöperation is here more necessary than in other phases of the work, for the long-run effectiveness of the Organization depends on the willingness of the states not only to accept the obligations incident to ratification but also to make an honest effort to live up to them. To establish sanctions for the international law of labor is therefore, in practice, merely a problem in "live and let live." Perhaps there will be a time in the distant future when governments and public opinion will demand a strong international system of control. That time is not yet, and what has happened in the nearly fourteen years of the existence of the Organization is the development of types of international control which are best adapted to international conciliation.

Treaty Provisions and Present Practice

Before making an effort to show this evolution in the practice of international discussion in the enforcement of conventions, it is well, perhaps, to give a brief outline of the provisions of the Treaty dealing with this subject. Part XIII provides that a member of the Organization must submit, within at most eighteen months, the conventions and recommendations adopted by the Labor Conference to the national authorities competent to act upon them. The prevailing opinion among the members has been that this submission must involve an opportunity for those bodies representing the public opinion in each country to accept or reject the principles of these international instruments. When states ratify a convention they are bound by it just as they are by other international treaties; but a labor convention requires some kind of legislative or administrative support for its application. Hence, a genuine ratification implies the passage of labor legislation, and fulfillment of the obligation of this ratification involves enforcement of this legislation.

Ratification, legislation, and en-

forcement of legislation are thus essential parts of the obligations which members undertake when they assume an active share in the life of the Labor Organization. While the formulation of conventions is somewhat simpler than former international procedures in that conventions are not signed by plenipotentiaries, it is, on the other hand, more complicated in that legislative or other action as to social policy is uniformly necessary for carrying out the obligations assumed.[1]

The machinery for the enforcement of ratified conventions is in part judicial and in part political. It is judicial in so far as the Permanent Court of International Justice is involved, and it is political to the extent that the Governing Body and the Labor Conference provide the machinery of discussion and coöperation necessary to the application of international labor standards. The later stages of the political phase of enforcement require some action on the part of the Secretary-General of the League of Nations, but so far the practice of international supervision has been concerned only with the negotiations which can be carried on within the Labor Organization. Neither the World Court nor the League has had anything to do with the application of conventions, other than that the Court delivered an advisory opinion in the Autumn of 1932 interpreting the provisions of the labor convention on night work for women.[2] The practice of the Organization shows that the only practical problems of enforcement at the present day are those concerning effective reporting by members on the steps they have taken to fulfill their obligations.

The Peace Treaty contains what are, properly speaking, sanctions provisions;[3] but it is significant that the word "sanctions" is used neither in the Covenant of the League nor in the Constitution of the Labor Organization. The nature of sanctions in international law is, in any case, very uncertain, and the practice of the Organization shows more of an appeal to public opinion and a persistent pressure on states to live up to their voluntarily assumed obligations than an application of any procedure resembling sanctions in national law. There is certainly no international sheriff; the final sanction for enforcement of international social standards is the good will of states. But even the members of the Peace Conference committee which drafted Part XIII declared, in reporting to the Plenary Peace Conference, that their idea was that the penalty provisions in the Treaty should be used only as a last resort. However, certain of the more aggressive trade union leaders probably believed at that time that it would be possible to resort to at least a certain amount of international coercion.

Representations—

The Treaty provides that industrial associations of employers or workers may make representations to the Labor Office that a state is not enforcing a ratified convention, and that the Governing Body may, should it deem it wise, communicate this representation to the government con-

[1] Federal states are permitted under the Treaty (Article 405) to treat conventions as recommendations if the power to pass labor legislation is placed in the states of the federation rather than in the hands of the central government which has the power to make treaties. Recommendations cannot be ratified, but information on their application must be communicated to the Secretary-General of the League of Nations. This Treaty provision would apply to the United States were it a member of the Organization.

[2] Under provisions of Article 423 of the Treaty of Versailles.

[3] Articles 409–20.

cerned. If the government does not reply to the representation, or if the reply is considered unsatisfactory, the Governing Body may decide to publish the representation and the reply, if any, which has been made.

Two cases have arisen under "representation procedure"—the Japanese in 1924 and the Latvian in 1931. Both of these situations arose from the representation of national trade union organizations that the governments were not enforcing the provisions of the 1920 convention on employment facilities for seamen, although they had ratified that convention. The convention provides among other things for the progressive abolition of fee-charging agencies and the establishment of free employment bureaus under joint committees of workers and employers.

In neither case did the Governing Body feel that it might carry the procedure so far as official communication of the representation to the government, asking for an official reply. A method somewhat different from that defined in the Treaty was resorted to in order to develop procedure along the lines of international conciliation and discussion. In both instances the representation was informally communicated to the government as soon as it was received by the Office, and the representatives of the governments appeared before the Governing Body offering explanations of national social policy. These explanations tended to show that the efforts of the governments toward enforcement were really much more effective than was asserted by the workers.

The consideration of these two cases has enabled the Governing Body to develop, as a principle of supervision by negotiation, the idea that every opportunity ought to be given a government to improve its enforcement of conventions before any action is taken which savors of direct international criticism. In other words, in the future the first consideration of a representation will, in all probability, be regarded as a kind of international preliminary hearing. Correlative to this is the fact that the government must be allowed a reasonable time to improve its enforcement, say a year, before a further and more serious discussion of the representation, if it is renewed, is undertaken.

Complaints—

Complaint of non-enforcement may be lodged with the Office by a government, or a delegate to the Conference, or made by the Governing Body of the Office on its own motion. That body may communicate the complaint to the state concerned as under representation procedure, but if the answer is not satisfactory it may request the Secretary-General of the League to appoint a Commission of Inquiry composed of three persons whose nomination to a panel has already been accepted. The members of the Organization are obligated to furnish all relevant information to the Commission, and the latter must make a report in which it may recommend any steps which seem necessary to bring about the enforcement of the convention. It may even suggest economic measures against defaulting states. The Secretary-General of the League must publish the report, and the governments involved must signify whether or not they accept the findings. Either the plaintiff or the defendant government may propose that the question be submitted to the Permanent Court. When the representation against the Government of Latvia was before the Governing Body, the workers' group wanted a Commission of Inquiry established as under complaint proce-

dure; but a clear distinction was drawn by the legal advisers of the Office and the Governing Body between the representation procedure[4] and the complaint procedure.[5] While later investigation of this problem made it clear that the Governing Body might proceed immediately on its own motion to the complaint procedure, the Latvian case established the fact that there is a clear distinction between the representation and the complaint procedures. The value of this separation, which is clear enough in the Treaty, is that the conciliation of opposing points of view will never be jeopardized by hasty action on the part of the Governing Body. If a government shows before the Body its definite intention to improve its enforcement of a convention, under the present practice it will always be given sufficient time to make this enforcement effective, and there will be no danger of an impetuous plunge into the more drastic complaint procedure.

Authority of Permanent Court of International Justice—

The Treaty also establishes the relation of the Permanent Court to the enforcement machinery of the Labor Organization.[6] It is provided that if a member does not submit the conventions and recommendations to the competent national authority, any other member of the Organization may refer the matter to the Court. It would seem that the Court has here a compulsory jurisdiction over members of the Organization. The Treaty states that the decision of the Court in regard to a complaint or concerning the obligation to submit conventions and recommendations to the competent national authority shall be final.

But, on the other hand, the Court may confirm, reverse, or vary the findings of a Commission of Inquiry, and it may indicate the measures, including those of an economic character, which should be taken against a defaulting member. And, if a state fails to carry out either the suggestions of the Commission or the Court, "any other member may take against that member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case." The defaulting government may, however, comply at any time with the recommendations of the Court or the Commission, and the Secretary-General may, on the request of this government, appoint a commission to verify the contention that the recommendations of the Commission or the Court have been applied. Upon a favorable report of the Commission of Verification, economic measures against the defendant government must be discontinued.

No complaints have ever come before the Governing Body, and there does not seem to be much likelihood that this type of procedure will be used.

REVIEW OF REPORTS

On the other hand, the growing usefulness of another means of pressure for enforcement is one of the most significant constitutional developments in the recent history of the Labor Organization. Article 408 of the Treaty provides that each member shall report annually to the Labor Office the measures it has taken to effectuate its ratifications. The form of the reports and the information to be contained in them are dependent on the decision of the Governing Body, but it is ap-

[4] Article 409.
[5] Article 411.
[6] Articles 416–20.

parently true that all the Governing Body may ask is that the measures taken shall be reported. States are invited, however, under recent decisions of the Body, voluntarily to give their opinion on the effectiveness of the application or enforcement of national law. Certain of the conventions and recommendations provide that information of a specific character must be reported, but the obligation to do this results only from the ratification of the convention, which is a free act, or from the decision of the government to follow recommendations which contain such stipulations. Where factory inspectors' reports are made public, the information contained in them naturally finds its way to Geneva in the process of research documentation which is carried on by the Labor Office.

The Treaty further provides that the Director of the Labor Office shall lay a summary of the annual reports submitted before the Conference. No other provisions are included in the Treaty, yet the intention seemed to be that the Conference should discuss each year the content of these reports. As ratifications accumulated and the annual reports increased in number, the delegates had increasing difficulty in discovering just what they showed. In 1926 the Conference appointed a committee commonly referred to as the Committee on Article 408, to examine these reports; and shortly thereafter the Governing Body named a small committee of experts to make a preliminary examination of the reports. The experts have the duty of attempting to determine the cases in which the content of national law deviates seriously from the terms of the conventions. Beginning in 1927 their report has been submitted to the Conference Committee and has been the basis of committee discussion.

Weaknesses of system of review—

The obligation to submit an annual report on each ratified convention applies only to the ratifying states. Had the members of the Organization ratified the conventions as widely as was hoped by the framers, no problem of inequality would have arisen. But under the present situation a state which has ratified a convention is subject to supervision and criticism by the experts and the Conference, while a state which has ratified no or few conventions is often exempt from open criticism. So long as a state has submitted the decisions of the Conference to the competent national authority, the letter of the Treaty has been observed. Perhaps one reason the Conference has accepted the reports of the Committee with little discussion is that the nonratifying states do not want to suggest that they are passing judgment on those states which have deposited their ratifications.

The workers' group sensed from the outset this fundamental weakness in procedure, for not only might nonratifying states assist in judging ratifying states, but the ratifying states alone are subjected to scrutiny and criticism. The workers proposed that states which had not ratified conventions should be asked to state why they had not, and thus place themselves in the same light of observation as those which had. While the Governing Body considered the suggestion, it was felt that its legality could be contested, as the legal obligation of nonratifying states ends with the submission of the convention to the proper authority.

Remedies applied—

It was decided that the chart of ratifications published annually in the Report of the Director should be communicated to the governments for

their observations and corrections. This has been very effective in securing from the governments statements which otherwise might be unobtainable, since a direct request by the Office might be held to be *ultra vires*. On certain occasions, the Office has inquired into the causes of nonratification of particular conventions, notably the Washington hours convention, and it has asked the governments to clarify the difficulties standing in the way of ratification. No general policy of investigating the causes of nonratification has been adopted, yet it has been possible to assemble a large amount of information on such causes.

Any suggestion that an attempt would be made to evaluate the replies of the governments or the accuracy of the information furnished has been avoided. Information on nonratification must not be considered as available for the criticism of national policy, and, strictly speaking, it is on an entirely different legal plane than information given on enforcement after ratification.

PRESSURE BROUGHT BY WORKERS

What value there is in the procedures which have developed around the reporting system as a means of supervising the enforcement of ratifications is to be found in the Conference committee dealing with the report of the experts and the annual summaries of the Director. The reason for this is very simple, and lies in the fact that the workers' group is fearless to a degree in its statements in the Conference and the committee as to the *application in practice* of ratified conventions. The experts must limit themselves to the conformity of legislation with the convention, but the workers' delegates are interested in the actual conditions of workers. Thus they are seldom satisfied with a mere statement of the content of the law. Each year the workers' group presents in detail certain situations in which it believes ratified conventions are not being enforced, and the employers' and government representatives listen with attention.

The governments, especially when their own workers' delegates have criticized their policies in the Conference, have offered public explanations. In addition to this, governments which have been criticized have almost without exception submitted to the Committee on Article 408 supplementary information or reports tending to show the inadequacy of the "observations" of the experts and the members of the Conference committee. But it is only the workers, that is, the representatives of the trade unions, that are in a position to state frankly what they know about the enforcement of conventions. The experience of the Organization is therefore highly suggestive for future developments in international supervision and control, such, for instance, as is proposed in relation to disarmament.

Thus the diplomatic observations of the experts become criticisms of nonenforcement by the action of the workers in the Conference. True, the Conference accepts the report of the committee with virtually no discussion, but the real value of the procedure appears in the sittings of the committee. At times the reports of this committee include observations additional to those presented by the experts. It is of particular interest that the workers are developing the practice of following to an extent, through the various national trade union organizations, the applications of conventions after ratification. It frequently happens that workers point out that the governments have not heeded the observations of the com-

mittees of previous years. A government may be almost certain, when there is a strong national trade union movement, that some of its failures to observe the conventions in practice as well as in legislation will be fully aired in the Conference committee.

The workers have therefore discovered a tactic which is likely to be singularly effective in the future work of the Organization. Yet they are not unreasonable. They are willing to admit that there are difficulties in the application of conventions, and when a government expresses its intention of attaining a better or complete enforcement, they are willing to accept such explanations. But it must be made clear that without the free discussion and presentation of information on the application of conventions brought about by the workers there would be in reality no substantial measure of control over the enforcement of ratified conventions.

There are certain dangers for the workers, however, if they go too far in pointing out the defective application of conventions, since the employers can use this same material to show the futility of ratification. The extremely legalistic views of the workers in the 1930 and 1931 committees, for instance, had for them distinctly disagreeable repercussions from the employers.

NEED FOR AGREEMENT ON INSPECTION

The present machinery of enforcement has no doubt been pushed to its constitutional limit. The next step is probably the adoption of a strong convention on factory inspection which will enable the Office to secure complete information on the administration of national labor laws. Such a convention would supplement, of course, the present recommendations on factory inspection. The meetings of factory inspectors which have been held for some years during the Labor Conference must be developed and stabilized, but before national factory inspection can become a regular part of the machinery for supervising the enforcement of conventions, the states must become thoroughly accustomed to having their voluntarily assumed international social obligations examined each year in the Conference.

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