INTERNATIONAL CONCILIATION

Published monthly, except July and August, by the
Carnegie Endowment for International Peace

Entered as second-class matter September 15, 1924, at the post office at
Worcester, Massachusetts, under the Act of March 3, 1879.

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NOVEMBER, 1932

No. 284

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
DIVISION OF INTERCOURSE AND EDUCATION
PUBLICATION OFFICE: 44 PORTLAND STREET, WORCESTER, MASS.
EDITORIAL OFFICE: 405 WEST 117TH STREET, NEW YORK CITY

Subscription price: 25 cents for one year, one dollar for five years
Single copies 5 cents

PREFACE

There have recently been published in the *International Conciliation* series two issues devoted especially to the League of Nations and it is a great satisfaction, therefore, to publish the document which follows dealing in scholarly fashion with the International Labour Organisation at Geneva working side by side with the League. The achievements of the International Labour Office are due in great measure to the late Director, Albert Thomas, whose recent death is so deeply regretted.

Professor Wilson has just spent a year at Geneva on a Social Science Research Council Fellowship during which he devoted his time to the study of the International Labour Organisation and what he has to say is authoritative and important.

NICHOLAS MURRAY BUTLER

New York, October 3, 1932.

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I. THE PRINCIPLE OF UNITY IN THE INTERNATIONAL LABOUR ORGANISATION

Perspective is dangerous in dealing with international institutions, since one tends to forget the historical gaps which have been leaped over, often without sufficient preparation. In the contemplation of the apparently smooth historical process by which an institution has approached maturity, the internal struggles, the evolution of concepts, and the uncertain future above all, are forgotten. If one turns from the *a priori* unity of historical perspective to seek unity in the daily or annual activity of the International Labour Organisation, this unity appears no less but it is founded upon some understanding of the internal struggles of international cooperation in the field of labor relations.

One of the paradoxes of international life is that while there is hardly a sphere of human activity where theory, dogma and doctrine are more basic, there is hardly a place where they are recognized less at any particular moment. This arises out of the constant necessity of paying attention to the detail of the day, the month, or the year. It is only in moments of disillusionment, such as the present, that the leaders of international life tie themselves to their doctrines and theories, and, as it was expressed in the volume commemorating the tenth anniversary of the Labour Organisation, their work becomes a work of faith.[1] Such a period for the Organisation came also during 1923 and 1924 when, after recognizing that ratification would be a slow process, the failure of the members of the League to pay their contributions threatened the very existence of the League and the Labour Organisation.

[1] See *Dix ans d'organisation internationale du travail* (Geneva, 1931), p. v (preface by Albert Thomas): "Here is a book written by international officials. And it is also, readers, a book of good faith. Even more it is a book of faith." This statement is given a different translation in the English edition of the same work.

In sixteen sessions of the International Labor Conference from 1919 to 1932 thirty-three conventions and forty-one recommendations have been adopted. This constitutes in fact the formal sum total of its international legislative work. Behind these seventy-four declarations of the international minimum of labor protection stand years of research by the Labour Office, nearly fourteen years of international negotiation and the twists of politics, unnumbered compromises, frequent false starts, disappointments to all those connected with the Labour Organisation, and, perhaps more significant, a growing sense of international reality by governments, employers, workers, and international labor officials. Each one of these conventions and recommendations is formally independent of the others. A state may take any one and leave the rest. The exigencies of international ratification demand that the program of the Organisation be divided minutely so that members may take a part where they do not feel that they can take all. The Organisation works, therefore, with the fragments of a program, but never at a single moment with the total scheme of international labor reform. In the nature of the case, the application of the objectives of the Labour Organisation, as stated in the Preamble to Part XIII of the Treaty of Versailles, is very unequal, but it is admitted now that any international program of consequence will take generations for its attainment. The Labour Organisation is no exception to this appreciation of international reality.

The object of the Labour Organisation is to establish an international code of labor standards,[2] a code of minimal protection for the most part; but a code which, in addition to averaging the law and practice of labor protection at any given time, will offer legislative and moral guidance, not only to countries less developed industrially, but also to those states which represent the farthest advance of rationalization or mechanical production. This code is not to be an industrial code, but a labor code, a code

[2] In 1929 the author published a brief article called "The International Codification of the Law of Labor" in the *Proceedings* of the Institute of International Relations, Riverside, California. The emphasis of this article was legal. At present it seems that the function of the Organisation is more to establish labor standards than labor law. Such an idea is based on the fact that the failure to secure a wide ratification of labor conventions has not hindered the formulation of such standards, nor their application in many cases in national law or in collective agreements.

which includes the workers on the soil, in the factory, in the commercial shop, on the water, whether seamen or fishermen, and ultimately in the air. It is to be a code which includes the protection of the potential workers, the child, and the mother of the child, the young person just entering industry, and the veteran ready for a pension or needing assistance because of industrial disease or accident. In concept it is a code which will help relieve unemployment, and which will remove the toilers' fears of insecurity, disease and mutilation. And ultimately it will be a code which protects the intellectual as well as the manual worker. Its results will be, in theory at least, the elimination of class struggle, and the establishment of rational cooperation between the factors in production. It should result in industrial peace.

The idea that the work of the Organisation in its totality constitutes an international labor code has been given frequent expression in the Conference and in the publications of the Organisation. A few instances may be given. The report to the Peace Conference on Part XIII remarks that neutral powers must participate in the Organisation as otherwise an effective "international code of labor legislation" cannot be secured.[3] In 1921 Thomas wrote: "The International codification of a reform which has already been adopted by some states tends to impel others to bring conditions of work in their own country up to those prevailing in states which have adhered to the general agreement."[4] The committee of the 1920 Conference dealing with the question of an international seamen's code remarked that "the term shall be used in this report to mean a collection of laws and regulations dealing with the condition and position of seamen as such which it may be possible for the various maritime countries of the world to adopt as a common and uniform body of international seamen's law."[5] In 1924 a Chilean delegate said: "Chile is convinced that, by its very existence, the International Labour Organisation influences public opinion in all countries, and creates a favorable atmosphere for the peaceful solution of social problems. It has established an international labor code of which the principles, whether formally

[3] *Official Bulletin*, Vol. I (1920), p. 282.
[4] *International Labour Review*, Vol. I (1921), p. 17.
[5] International Labor Conference, *Final Record*, 1920, pp. 166ff, 555.

ratified or not, should be respected by all civilized nations."[6] In speaking to the 1928 Conference the Director remarked that Luxemburg "has treated all of the conventions as a sort of code of international labor legislation which it has accepted *en bloc*."[7]

II. The Bases of Continuity

A. In the Treaty

The life of any institution is continuous, and from the simple standpoint of uninterrupted existence the work of the Organisation has continuity. But the quest of the present moment is a brief analysis of the bases of its legislative continuity.[8] It has a program and a complicated body of machinery sketched in the Treaties of Peace. This program centers on the conditions of labor. Inherently the Labour Organisation is a reforming organization, and, aside from its efforts to relieve unemployment, most of its work is reformist in character. Even in the relief of unemployment the tendency has been to organize a policy of prevention which may become a major economic reform. Whatever the seeming dissipation of its effort in a multitude of interests, the Organisation finally converges on international legislative standards. There is practically no research undertaken by the Office which does not finally look to the establishment of an international criterion. Hence, the large problem is to discover what are the bases of unity in this plan or order of procedure. The primary basis of this unity is in the Preamble to Part XIII.

[6] ILC, *Final Record*, 1924, p. 41.

[7] ILC, *Final Record*, 1928, p. 273. Amos S. Hershey has remarked: "Thus the work of official codification may be said to have begun. It is not codification in the old narrow sense of merely stating existing law in the form of a code, but also includes legislation or the adoption of new rules. What is needed for the advancement of international law is not so much codification as legislation. In the international world, either can only be accomplished adequately through the treaty-making power, but this power can be set in motion through the agency or under the auspices of the League of Nations." *The Essentials of International Public Law and Organization* (New York, 1927), p. 521, note 1, *passim*.

[8] One striking difference between the League and the Labour Organisation may be noted. Much of the work of the League is either for the preservation of the *status quo* politically or economically, or for the re-attainment of the *status quo*. This is most clearly shown in the political activities of the League, where since 1920 the over-mastering necessity of organizing machinery for the preservation of peace has left little time to attend to the peaceful political evolution of the European system of states. Much of the economic work of the League is likewise a fleeting glance back to days which now look peaceful and prosperous. This is not in any sense a disparagement of the reforming activity of the League in many fields, such as mandates, slavery, the traffic in women and children, health, and so on, but it is merely to say that the preponderant interest of the League is in the maintenance of the *status quo*.

> "Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice; and whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled. . . . "

declares the Treaty as a prelude to a list of the labor reforms which the Organisation is to sponsor. These reforms include the regulation of the working day and week, the control of the labor supply, the prevention of unemployment, a living wage, industrial hygiene, protection of women and children, social insurance, protection of workers abroad, freedom of association, vocational and technical education, and other measures.

The passage quoted above reflects no doubt the uncertainty created in 1919 by Bolshevism. The object of the Organisation is perhaps to secure such a number of reforms that the danger of social revolution will be avoided, that the nineteenth century capitalistic system will be mellowed by social justice, and that the organizations of workers, i.e., trade unions, national and international, may turn to Geneva rather than to Moscow. While one must not ignore the moral force of international labor idealism, the temptation is great to assume that the plenipotentiaries at the Peace Conference acted under the double fears of Moscow and the demands of international conferences of trade unionists, especially of Leeds in 1916 and of Berne in 1919.[9] The objects of the Organisation will be attained, so the Treaty implies, by the adoption of draft conventions and recommendations embodying the reforms noted above. The unity of these conventions and recommendations rests, therefore, in the Treaty of Peace.[10]

B. In the Structure and Practice of the Organisation

The unity and continuity of the work of the Organisation is to be found, in the second place, in its structure and practice. The Organisation is composed of an International Labor Conference, a

[9] See L. L. Lorwin, *Labor and Internationalism* (New York, 1929), *passim*.

[10] The Permanent Court of International Justice in its Second Advisory Opinion states that the competence of the Organisation is defined in the Preamble to Part XIII. See *Publications of the P.C.I.J.*, Series B, Advisory Opinion No. 2. See *Official Bulletin*, Vol. VI (1922), pp. 339–351.

Governing Body, and an International Labour Office located in Geneva. The original intention of the Peace Conference was that the Organisation should be an integral part of the League System.[11] The evolution of the Organisation has given it a much wider independence than was originally intended, this being in large measure due to the aggressive personality of Albert Thomas, a former member of the French cabinet, who became in 1920 the Director of the International Labour Office.[12] Not only was the Organisation in operation before the League of Nations, but the Labour Office itself was established in Geneva before the arrival of the Secretariat of the League.

The Conference, which meets at least once a year, is composed of two government delegates, one employers' and one workers' delegate from each of the members of the Organisation. The Governing Body includes twenty-four members, twelve representing governments (eight of these representing the eight states of chief industrial importance and having permanent seats), six representing the workers and six the employers. As has been suggested, the structure and practice of the Organisation converges upon the task of drawing up draft conventions which may be ratified by governments, and recommendations which are not ratified but which, like the conventions, must be submitted within at least eighteen months to the competent authority in each state member of the Organisation.

The most important constitutional test of the continuity of the work of the Organisation as reflected in the Conference has been the problem of special seamen's conferences which have been held in 1920, 1926, and 1929.[13] The Peace Conference Commission suggested by resolution that a special conference to consider the regulation of the conditions of work of seamen be held.[14] The shipowners have been adamant in their demand that a conference which considers the question of labor at sea shall be composed of shipowners and *bona fide* representatives of seamen, i.e., not ordinary trade unionists. The employers' and government representatives in the Governing Body have generally sided with the shipping interest, but the Labour Office and the workers have, in the interest of the continuity of the Conference, been unwilling to admit that there must be a regular succession of seamen's conferences. The International Federation of Trade Unions, which has so far controlled the workers' delegation to the Conference and the Governing Body, has been particularly opposed to special conferences of any kind, for in such special conferences its control is broken. The early proposals of the Office that the seamen should work in the Conference, as does agriculture, through the appointment of advisers to accompany the regular delegates, has been resolutely opposed by the shipowners and certain seamen's unions. Since the seamen's Conference of 1920 at Genoa was in reality provided for by the Peace Conference it was held without question, but Thomas and the workers' group have persisted in regarding such conferences as exceptional.[15]

If the annual Conference represents a continuity of tradition and point of view, the Governing Body represents the administrative continuity of the whole Organisation, as its chief duties are to establish the agenda of the Conference and control the activities of the Labour Office. While the Conference by passing resolutions may request that certain subjects be studied (or may definitely place them on the agenda), the Governing Body may determine when and how these subjects shall be studied by the Office. The Office itself has felt that a hard and fast program of research

[11] *Official Bulletin*, Vol. I, p. 262. The report to the Peace Conference of the Commission on Labor Legislation says that the Organization is to be "part of the administrative organization" of the League. See also *ibid.*, p. 297.

[12] The premature and unexpected death of M. Thomas in May, 1932, was a severe blow to the Labour Organisation. Mr. H. B. Butler, Deputy-Director of the Office, was made Director to succeed Thomas by the Governing Body on July 1, 1932.

[13] The 1929 seamen's Conference was a first discussion, and as the second discussion of the items on the agenda of this Conference has never been held no conventions or recommendations have resulted from it. The last decision as to this second discussion Conference was taken in 1932 when the Governing Body, owing to financial considerations, decided that it should not be held in 1933.

[14] *Official Bulletin*, Vol. I, p. 218.

[15] The seamen's Conferences of 1926 and 1929 were held after the general Conference, the Conference of 1926 coming immediately after and the one in 1929 being held some months after the general session. The Office has proposed that seamen be represented by advisers, which was rejected; that the seamen's conference come immediately after the general Conference, which was accepted with reluctance by the shipowners in 1926, as they felt that many delegates from the first conference would be held over to the next; and the latest proposal has been that the seamen's conference come before the general session. The postponement of the second discussion on the items on the 1929 seamen's agenda has deferred the problem, but it must be admitted that this is one of the most troublesome of the unsettled questions before the Organisation.

would be a mistake because no allowance would be made for exceptional issues.[16]

The Office has proposed certain items to the Governing Body for the agenda on the major tasks assigned to it by the Treaty of Peace on the general theory that a subject is "ripe" for international treatment. The Office view has tended to be that when adequate research has been done, the subject is "ripe," while the employers and governments have held frequently that a subject is not "ripe" unless there is a substantial uniformity in law and practice between the more important members of the Labour Organisation. The Office theory of "ripeness" obviously leads to a greater continuity in the work of the Conference, while the employers' theory would tend to make it more fragmentary. No definite thesis as to the nature of international maturity has as yet been accepted, though the view of the employers has been gaining ground in recent years.

Article 390 provides that "every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference." This individual vote of the delegates makes for continuity, and, owing to the fact that certain employers' and workers' organizations have from the first controlled the selection of delegates, the policy of the workers' and employers' groups has remained relatively constant. It must be admitted, however, that the employers have developed a frankly critical view concerning international action. Only the shipowners have, however, gone so far as to withdraw from the Conference, as they did for a few days during the 1929 maritime session. While there have been a number of threats to withdraw from the committees of the Conference, only a few temporary withdrawals have actually taken place. The basis of compromise between the different groups

[16] Two distinct types of questions come before the Governing Body as prospective items for the agenda: the broad general items laid down by the Preamble and Article 427 of the Treaty of Peace, and the particular request submitted by governments or by organizations of workers. So far, the employers as a group have never asked that any item be placed on the agenda. The regulation of the hours of work, social insurance and industrial hygiene, the Office has before it always. But the request of the British government that the compulsory disinfection of anthrax be placed on the agenda of 1921, or that of the French government for the regulation of the hours of work in certain phases of glass manufacture, requests which in fact involved only a few workers comparatively, or the request for the special regulation of the hours of work in the important European coal-producing countries by the miners' organizations and the League Assembly, are occasional demands which the Organisation must meet.

of the Conference consists in the extreme demands of the workers and the extreme conservatism of the employers, balanced by the government delegates, who usually find themselves in a position to accept the compromises arranged between the workers and the employers.[17]

The continuity of the work of the Organisation is clearly illustrated in the system of procedure which the Governing Body, the Office, and the Conference have evolved.[18] In the early years of the Organisation, that is, through the Conference of 1923, the agenda was established by the Governing Body, the Office preparation was completed, and the Conference adopted conventions and recommendations all in the same year. But beginning in 1924[19] the agenda has been established in the year previous to the Conference and Office preparation has been extended over a longer period of time. Members of the Swiss Council of States in 1922 suggested that the Conference should meet less frequently;[20] others proposed that there should be alternative sessions of preparation and adoption. The first discussion of the question contemplated a fundamental revision of the Treaty of Peace in order to have more than a year between the sessions of the Conference. Under the guidance of the Office and the Governing Body, however, proposals to alter the Treaty were transformed into proposals to alter the procedure of the Conference. The work of the Conference has been retarded by reforming the procedure of preparation and adoption of conventions and recommendations.[21]

[17] Director Thomas was a master of the art of conciliation. On a number of occasions only his ability to find a basis of action between the employers and the workers saved the work of committees and enabled the Conference to surmount seemingly unbreakable deadlocks. The work of the Committee on Discipline in 1926 is, I think, one of the finest examples of international conciliation.

[18] While the procedure of the Conference has evolved around the idea of continuity of work, it has not been based on the idea of codification.

[19] See *Official Bulletin*, Vol. VII (1923), pp. 165–66. Owing to exceptional circumstances not considered in the original plans of the Office and the Governing Body, the period between the establishment of the agenda of 1921 and the Conference of that year was more than twelve months.

[20] *Official Bulletin*, Vol. V, pp. 109–112.

[21] After long debate the 1922 Conference voted down a proposal to amend the Treaty so as to provide that the Conference should meet once every two years. ILC, *Final Record*, 1922, pp. 300–323. It was decided, however, that the sessions of the Conference should be alternately for preparation and for the adoption of conventions and recommendations. This decision, while not actually carried out in the revised standing orders, was based on the assumptions that (1) more time was needed for the preparation of conventions and recommendations, (2) that more time was necessary to carry on negotiations between the conflicting interests represented in the Conference, and (3) that Parliaments must have more time to consider the actions of the Conference.

A new procedural system was tried in 1924 and 1925. It was called the "double-reading procedure" and consisted mainly in distributing over a period of two years the work which had been accomplished previously in one. The problem of time was thereby partly if not entirely solved. But in dividing the work into two sessions it happened that a certain amount of energy went to waste. Indeed, under that system, the proposed draft conventions and recommendations submitted to the governments in the "Grey Reports" were discussed at a first session, but were not finally voted upon by the Conference until a second session and after a discussion which was supposed to bear upon questions of detail only. The second reading amounted in practice to a renewed discussion of the complete drafts, substantial amendments were moved, and in the end it was felt that the first reading had been very little more than useless.

This unsatisfactory situation impelled the Conference to seek another system. On the recommendation of the Governing Body, therefore, the Conference adopted a third method known as the "double-discussion-questionnaire procedure." It replaced by proposed draft questionnaires the draft conventions and recommendations which in the "double-reading procedure" were laid before the Conference at a first session. These questionnaires included definite suggestions, in the form of precise questions, as to the points upon which the governments were to be consulted by the Labour Office in the preparation of the proposed texts to be submitted to the Conference at a second session. The purpose of the procedure was to make the first discussion more general, more comprehensive and more enlightening from an international viewpoint. But here again practice failed to produce the desired results. The committees appointed to deal with the different questions on the agenda did not always hold a general discussion and oftentimes began immediately to consider the proposed draft questionnaires in the same manner as if they had been asked to prepare definite texts of draft conventions or recommendations. In fact, a great deal of time was spent in discussing mere questions of

drafting and as a result the committees had no time to discuss thoroughly the problems of principle involved.[22]

In view of these circumstances the Conference invited the Governing Body to examine further the application of the "double-discussion-questionnaire procedure," and to make proposals for its improvement. The whole question was carefully studied by the Office and the Governing Body, and at its Twelfth Session (May-June, 1929) the Conference adopted certain proposals, the effect of which is to substitute draft conclusions for draft questionnaires, and to revert to the original principle of letting the Office draw up the questionnaires to be submitted to the governments. The standing orders adopted in 1929 declare that when a question has been placed on the agenda of the Conference, the Office shall submit a preliminary report setting forth national law and practice, and fixing as completely as possible the points upon which the governments are to be consulted, and subject to the approval of the Governing Body this report shall be sent to the governments before the opening of the Conference.[23] If the Conference decides that the matter may be suitable to form the subject of a draft convention or recommendation, it shall decide by the approval of conclusions or resolutions the points upon which the governments are to be consulted. The Conference then

[22] This system of procedure was used in the general Conferences of 1927, 1928, and 1929. Some defense of a negative character may be made of the committees. It was a question of what should be included in the questionnaires; of what points should be submitted to the governments. If certain points were not raised, the Conference would not have before it at the next session the views of the governments, and there was less chance of provisions being included which reflected the influence of the question. In fact, the Office itself was extremely careful in drafting the questionnaires for submission to the Conference, as it did not in some cases wish certain questions to be raised. A broad, general questionnaire enabled the Office to avoid raising embarrassing questions. Members of the committees frequently insisted on the importance of framing the questions or of leaving them out. Thus, positively, if a question was inserted there was a greater chance for a given provision to find its way into the draft conventions and recommendations proposed at the next Conference. While this procedure was in use, the Office frequently tried to discourage discussion of the provisions of the questionnaires by saying that the purpose of the questionnaire was simply to elicit information from the governments; however, in the reformed questionnaires before the 1921 Conference the Office position had been essentially that of the members of the committees at later Conferences, i.e., as to the close connection between the provisions of the questionnaires and the ultimate provisions of conventions and recommendations. See introductory memorandum to Questionnaire No. 2, (1921), on Agricultural Questions.

[23] This approval by the Governing Body or a committee of the body, while in fact a formality, is important since the Grey Report involved here determines fundamentally the scope of the Conference discussions, and it is in turn the function of the Governing Body to fix the scope of each item on the agenda. This submission of the Grey Report is, therefore, a control over the scope of the agenda of the Conference.

determines whether the item shall be placed on the agenda of the following session.[24]

This fourth system, the "double-discussion-draft conclusion procedure," has been applied since October, 1929, at the Thirteenth Session of the Conference. The committees have devoted more time to general discussion, and the procedure has been a distinct improvement. That no further stages in the evolution of the procedure of the Conference are to be expected cannot be said. But it may be that the result of the evolution of procedure has been a closer integration of the work of the three parts of the Organisation, the Office, the Governing Body, and the Conference, and also between the different sessions of the Conference.

III. Principles of Codification

A. Law and practice versus social progress

The administrative concept of codification holds that by a rearrangement of the existing legal materials a more effective application of the law may be attained; the ethical or sociological concept of codification holds that the function of the code is not only to attain a better application of the existing law but also to achieve by codification social or moral progress. It implies the elaboration here of international labor standards more than the establishment of a formal international labor law. International legislation for the protection of labor has wavered between these two concepts of the labor program of the Treaty. On the one hand, the employers and frequently the governments have insisted that international action should be reflective merely of the common law and practice of each member. *Per se* international labor legislation, from this point of view, would not result in progress; it might merely avoid a certain amount of international competition in which conditions of labor are manipulated as a factor.

The necessity of careful preparation has quite unexpectedly worked in favor of an administrative conception of the international labor code. Early in the history of the Organisation,

[24] Paragraph 6 of Article 6 of the standing orders declares: "The International Labour Office shall draw up on the basis determined by the Conference the questionnaire which it shall submit to the Governments within one month of the closing of the Session of the Conference."

the British employers and government representatives in general began demanding that before an item was placed on the agenda by the Governing Body, that body should have before it a full statement of law and practice. The test of "ripeness" was to be in this view merely the existence of a large body of comparable national legislation. Beginning in 1923 when the Governing Body established for the first time the agenda of the Conference in the previous year, the Governing Body began considering the agenda of the Conference twice before making a final decision. At the first consideration, usually in October, on the basis of the suggestions of the Office, which in turn are based on research and comparison, certain subjects are selected for later discussion. At the next session, usually in January, law and practice reports on these items of the provisional agenda, generally five in number, are presented to the Governing Body by the Office, and the former then selects two or three for the agenda of the Conference for the coming year.

The Office has, by the force of events, by the necessity of reaching agreement between the groups in the Conference on the basis of practice, been driven to a partial acceptance of the law and practice theory of codification. However, such was not the case during the first three Conferences. During these Conferences the spirit of labor reform ran high. The agenda of the Washington Conference in 1919 was fixed by the Peace Conference and embodied in the Treaty of Peace; the agenda of the 1920 Genoa Conference dealing with the conditions of work of seamen was suggested by a resolution of the Peace Conference Commission, and the atmosphere of 1920 was clearly that the Conference had its *raison d'être* in the application to seamen of the decisions of the first Conference. In 1921 an effort was made to apply the basic decisions already taken to agricultural labor. The first three Conferences were the great reforming Conferences of the Organisation; they were held before the spirit of the Peace Conference had vanished in the face of unexpected post-war depression and European political conflict. In 1922 and 1923 the Organisation halted the march of international legislation, considering constitutional questions primarily in 1922, and in 1923 adopting a long recommendation on factory inspection, which, properly speaking,

was viewed as an aid to the enforcement of legislation already adopted. The next year, 1924, saw the beginning of another cautious march toward building up the labor code, but during these latter Conferences, aside from social insurance and industrial hygiene measures, the work of the Organisation has lacked the unity of the first three Conferences. The obvious conclusion is that the internal unity of the work of the Organisation was infinitely greater during the time of aggressive codification with definite social progress in view, but that administrative codification on the basis of law and practice, lacking internal unity, finds external unification in the common principles of national legislation.

While the Office has in fact surrendered most of its early aggressiveness in international labor legislation, it has never surrendered the principle, and the Conferences have, as a matter of fact, continued to recognize that *in principle* an international labor convention or recommendation should represent an advance, perhaps even for the members which have developed social legislation. The only clear and unequivocal battle on this issue took place in 1926 at the Ninth Session. The issue centered on the proposed draft convention on discipline at sea (later defeated in the Conference) and the recommendation on the general principle of the inspection of conditions of work of seamen. The shipowners, ever aggressively against the work of the Organisation in this field, insisted that the draft conventions and recommendations proposed by the Office went beyond the reference of the 1920 Conference which, in a resolution, asked for the codification of the law relating to seamen. It asked, among other things, that the members establish national seamen's codes. The proposals of the Office were direct attempts to codify the law relating to seamen. The shipowners insisted that the basis of codification recognized in the Conference of 1920 and later in the Joint Maritime Commission was the actual practice of the states. To them, the Organisation had no right to go beyond the actual practice and propose what amounted to reforms in national legislation. Resolutions of the shipowners to this effect were finally defeated, both in the Conference and the committees of the Conference dealing with discipline and the general principles of inspection. The

freedom of the Office to propose advances in legislation was recognized as a basic principle of codification. The power of the Office to utilize this freedom effectively, of course, is entirely another matter.[25]

B. UNIVERSALISM VERSUS REGIONALISM

If international labor standards are based on law and practice, they must in fact be based on the average of legislation in the more industrially advanced countries; if they are to be based on the concept of social justice embodied in Part XIII, the Labour Organisation must leave behind for a number of decades at least the countries less advanced industrially. The Treaty of Peace demands that the international standards of labor shall be universal; but the facts of the labor world, insufficiently appreciated in the Peace Conference, demand in fact the continuous recognition of regionalism. Formally and officially the Labour Organisation is universal; it is universal in membership, and in the obligation of each member to submit to its competent authority the conventions and recommendations adopted by the Conference and to submit annual reports on the application of ratified conventions (Article 408). Part XIII recognizes in Articles 405 and 427 that conditions in certain countries prevent the realization of uniformity in labor conditions, and in certain conventions special conditions or exceptions are allowed for countries of Eastern civilization in which industrial conditions contrast fundamentally with the West.[26]

No serious demand for regional treatment has been voiced in Europe, but one important debate on the question has arisen in recent years. The fact that Scandinavian countries, for instance, have held conferences on certain matters, such as social insurance, has not perturbed the Organisation, since such special regional discussions of the work of the Office have been regarded as aids toward the ultimate ratification of conventions. But when in 1929 the League of Nations Assembly asked the Labour Organisation to consider the conditions of work in coal mining in European

[25] ILC, *Final Record*, 1926 (9th), pp. 18ff. The action of the Conference, however, destroyed the possibility of an organic seamen's code, especially by the rejection of the proposed convention on discipline.
[26] See *infra*, p. 42.

countries, the issue could not be evaded. The coal question was faced by the Organisation as an emergency measure, and a preparatory technical conference of the nine chief coal producing countries of Europe was held in January, 1930. The preparatory work centered on the European problem, and when the proposed regulation of the hours of work in coal mines came before the 1930 Conference overseas and Asiatic countries had not been consulted at all. The employers insisted with some justice that it was legally impossible for the Organisation to pass a convention limited to European members. The overseas countries in turn demanded that the convention should not apply to them, i.e., that they should not have to submit it to their competent authorities. The confused situation in the 1930 Conference brought about the defeat of the convention, but the Conference immediately, under Article 402, placed it on the agenda for 1931. The question of whether the double-discussion procedure should apply to the convention was left to the Conference on both occasions, but the Office in preparing for the 1931 Conference sent the questionnaires to overseas countries and did in fact obtain some information from them; they had not, however, attended the preparatory technical conference. The proposed texts submitted in 1931 evaded the issue of regionalism, though it was understood that the convention should in fact apply only to the European coal producing states. While the position of the Office in 1930 seemed to be that it was possible to adopt a convention limited to certain countries, the vigorous criticism of the position apparently convinced it that the Organisation cannot adopt a regional convention; all conventions must be universal in form at least.[27]

C. HOW MANY WORKERS MUST BE INVOLVED BY A CONVENTION?

A question of some importance is whether a convention must necessarily cover a large number of workers. It has been argued that questions should not be placed on the agenda because only a limited number of workers will be protected by such proposed international action. Thus, in the Governing Body in January,

[27] *Official Bulletin*, Vol. XV (1930), pp. 1–2; ILC, *Final Record*, 1930, pp. 487–97; ILC, *Final Record*, 1931, p. 482. Article 18 of the coal convention names seven European coal producing states and declares that two of these states must ratify the convention before it comes into effect.

1932, when the weekly suspension of work in glass manufacturing where automatic processes are used was placed on the agenda of the 1933 Conference, it was contended by certain employers' and some government representatives that so small a number of workers would be affected that it was not worth the time of the Organisation when such oppressive questions as unemployment might be discussed. When the problem of anthrax was before the Conference of 1921, one of the factors which prevented the adoption of a convention was the small number of individuals who were annually infected by the disease. This objection was raised likewise against the convention adopted the same year prohibiting the use of white lead in certain types of painting. While the Conference of 1919 adopted a recommendation urging the ratification of the Berne Convention of 1906 against the use of white phosphorous in match manufacturing, it was never urged that a very large number of individuals were actually affected. The principle upon which the Organisation seems to work is that in questions of industrial hygiene and safety the number of workers affected is not so important as the possibility of avoiding the cases which actually do occur.

Most of the conventions and recommendations adopted cover a large number of workers. The conventions on social insurance are designed to cover virtually the whole working population of the world, just as are the conventions and recommendations on the hours of work. But in each item which goes on the agenda the weight of the demand for its inclusion is fully as important as the number of workers involved. One of the chief industrial powers can usually get an item on the agenda, and generally a concerted demand by trade union organizations is met. Nor can it be said that the number of workers has much effect on the ratification of the convention, for conventions of a humanitarian nature, such as those which protect women and children or those which seek to stamp out an industrial disease make a much stronger appeal to the general public than do those which involve more strikingly economic factors.

1. HUMANITARIANISM VERSUS INTERNATIONAL COMPETITION

In the more "orthodox" statements of the basis of international labor legislation the factor of international competition looms very

large. When in the early nineteenth century it was advocated that the international treaty should be used to protect labor, the idea was essentially that by international agreement labor could be removed to a degree from the field of competition. Yet at no time has an action by the Labor Conference depended upon a careful analysis of the existing state of competition between any of the members of the Organisation. At times it is urged that a reform is impossible unless other states adopt it likewise. Furthermore, many important competitors in the world market, such as Great Britain, Germany, France, Australia, etc., have adopted extensive programs of labor legislation without considering the state of social legislation in other countries. Italy has pleaded that labor rather than raw materials is her chief weapon in international competition, and that, therefore, it is impossible to adopt certain conventions even if the other powers should do so.[28] Some instances of competition have been cited before the Conference and the Governing Body, such as the Japanese fear of Chinese textile competition, or the charges and counter-charges between Japanese and Bombay mill owners, but the Office has never undertaken, or been invited to undertake, an investigation. One has the feeling that international competition is one of the least important factors in the everyday working of the Organisation, but that it is frequently a straw-man excuse for not ratifying the labor conventions. Certain states whose legislation may even go farther than the terms of the conventions will yet urge international competition as an excuse for non-ratification; it is argued that chief competitors have not yet ratified.

Yet the costs of social legislation cannot be ignored. While there may be little foundation for the international competition theory of international labor legislation, at least according to classical economic concepts, there may be cases in which a state does secure its advantage in the market because of low wages, long hours, poor conditions of work, and few social charges.

[28] *Report of the Director*, 1926, Sec. 218. Competition has been used by the employers as an argument against international action. In the discussions of 1930 and 1931 concerning the coal convention they argued that international action was impossible so long as the United States was not a party to the action. They pointed to the fact that the United States produces nearly half of the coal of the world. The workers in this case tried to show that the United States was not an important factor in world coal competition because of the small amount exported.

Perhaps the advantage gained in recent years by Poland in the coal market of Europe is in part due to the working conditions of Polish coal miners, which are in general worse than those found in England. Yet if a state has gained a position in the world market by exploiting labor, the Labor Conference can scarcely persuade that state to adopt conditions which will actually return the advantage to beaten competitors. Considering the important place held by the theory of competition in the history of the international labor movement, it is little short of amazing that whole Conferences come and go with hardly a reference to this so-called fundamental of the international protection of labor.

The driving forces for labor protection internationally are simply the driving forces for this protection nationally, acting, however, upon the international scene. Trade union demands and progressive governments with an eye to the improvement of social conditions are the really important forces in the Labour Organisation. The fundamental force is the feeling that workers should be given better treatment than the unregulated modern industrial system can give. Trade unionism demands conventions and recommendations often times, moreover, merely that the international standard laid down can be embodied in national collective agreements. The International Labor Conference is the extension to the international sphere of the struggles of employers and workers carried on incessantly in the domestic arena. If the demands of the trade unionists helped bring into being Part XIII of the Treaty of Peace, their demands at the present time keep it alive. The employers may hide at times behind "international competition," but the fact remains that the International Labour Organisation is fundamentally humanitarian. International competition is not a fundamental in the development of the international code of labor standards.[29]

2. NATIONAL CODES

From reading the Treaty of Peace one might imagine that national codes are of little or no interest to the Organisation. The

[29] The conventions which may chiefly involve the problem of competition are those regulating the hours of labor, and in particular the Washington hours convention. The special *Report of the Director* to the 1922 Conference on the hours convention makes a thorough canvass of the situation.

English-speaking countries have been more interested in the particular piece of legislation than in the international establishment of law on a given subject. The Organisation, however, has had a marked slant toward the idea of codification, both national and international, from the outset. Perhaps the late Director, being a Frenchman, imported this to Geneva. We have already discussed the inspired resistance of the shipowners to the program of seamen's codification proposed by the Office on the basis of the Genoa resolution of 1920. This resolution is important here because of the suggestion that national codification precede international. In 1928 the Office proposed that, in the draft questionnaire on accident prevention, the question should be asked whether the governments thought there should be a special codification of laws relating to safety and industrial hygiene. There was little response by the Conference to this suggestion. Special codification does not seem to be a successful program for the Organisation.

On the other hand, it has been a marked stimulation to national codification. While the pace of social legislation was accelerating gradually during the latter part of the nineteenth century and during the early part of the twentieth, and while the post-war period even without the Labour Organisation would have seen a tremendous increase of social legislation, the Organisation has given focus to a movement toward labor protection which has stirred in nearly all parts of the world. The Office has given frequent advice, encouragement, and information to governments contemplating the establishment of national labor codes, and this work is by no means its least significant activity. In recent years the national codification movement has been of particular importance in Argentina, Brazil, Chile, Columbia, Egypt, France, Germany, Mexico, Panama, Poland, Portugal, and Turkey. These national codes are invariably regarded by the Office as valuable steps toward the acceptance of the international minimum of labor protection.[30]

F. THE INTERRELATION OF CONVENTIONS AND RECOMMENDATIONS

We have yet to treat the most fundamental aspect of the codification movement launched by the Labour Organisation. We

[30] See *Report of the Director*, 1930, Sec. 186; *Annual Review*, 1930, p. 16.

have traced the circumstances which tend to give unity and continuity to the work of the Organisation, and our problem now is to trace and examine the unity of program found in the conventions and recommendations adopted by the Conference. We have noted that international exigencies result in an extensive subdivision of the Organisation's program in order to permit partial acceptance by each member, but this does not signify that the different conventions and recommendations bear no relation to each other. In fact there is the closest relation, and with the adoption of more conventions and recommendations this organic interrelation can only become more important, especially in those parts of the labor code which are most completely formulated, such as those dealing with the protection of women and children and social insurance. The question of whether there is an international codification of labor standards rests upon the integration of the social principles of the labor conventions and recommendations. On the other hand, different segments of the actions of the Conference constitute perhaps separate codes, or sub-divisions of the larger code.[31]

IV. The International Labor Code

A. THE HOURS OF WORK

One of the most fundamental parts of the work of the Organisation is the attempt to regulate internationally the hours of labor. Yet the success of the Organisation in this field has been less than in others. The Washington hours convention (1919) provides for the eight-hour day and forty-eight-hour week in industrial undertakings, but it has been ratified with extreme caution. The attempt in 1920 to extend the Washington principle to seamen failed by one vote, but at this Conference recommendations were passed suggesting the extension of the principle to the hours of work in the fishing industry and in inland navigation, subject, however, to the conditions in these industries and to consultation with the employers' and workers' organizations. The Conference

[31] It should be observed that the discussion of the interrelation of conventions most frequently takes place in the committees of the Conference and on the problems of drafting. That definitions of industry, commerce, etc., must be nearly the same in all conventions is a fundamental principle of drafting. The question of the scope of conventions covering the same general problem, e.g., the work of children or the limitation of the hours of work, has frequently evoked discussion of the interrelation of conventions.

of 1921 was unwilling even to pass the proposed recommendation suggesting collective agreements for the regulation of the hours of work in agriculture.

As a supplement to the Washington hours convention, a convention of 1930 provides for the eight-hour day and forty-eight-hour week for those employed in commerce and in offices. This convention follows the general structure of the one adopted in 1919, though the 1930 convention places a somewhat heavier emphasis on the use of collective agreements in permitting exceptions to the general standard. At the same Conference three recommendations were passed asking for the investigation of conditions and a report in four years on (1) the hours of work in hotels, restaurants, and similar establishments; (2) theatres and other places of amusement; and (3) in establishments for the treatment of the sick, infirm, destitute and mentally deficient. These reports will be used to determine whether items may be placed on the agenda leading to the further adoption of draft conventions limiting the hours of work.

A convention limiting the hours of work in coal mines to seven hours and forty-five minutes a day was passed in 1931, after having failed of adoption in the Conference of 1930. Since wages constitute a chief item in the cost of production of coal, a few minutes more or less of work a day makes a considerable difference in the productive power of a country. This convention, different from all the others in this respect, is subject to revision at the end of three years. The usual period suggested in the conventions is ten years.[31a]

[31a] In September, 1932, an extraordinary session of the Governing Body (the first session of such a character) decided: (1) to put on the agenda of the 1933 Labor Conference the question of the reduction of the hours of work, which may lead to international action favoring the 40-hour week as a remedy for unemployment. The double-discussion procedure is not to be used at the 1933 Conference in the consideration of this item on the agenda; (2) to summon a preparatory technical conference before the end of 1932 to consider the results of the Office research on the reduction of hours as a remedy for unemployment; (3) that the conclusions of the technical conference shall be submitted to the Governing Body in January, 1933, when the body shall decide whether such conclusions shall be communicated to the World Economic Conference and to the governments; and (4) that the Secretary General of the League shall be asked to convoke the Mixed Unemployment Committee of the Commission of Enquiry for European Union to take practical measures in furthering the program of international public works, as proposed by the late Director, as a remedy for unemployment. This is the first time that international action has been contemplated by the Organisation with no basis at all in national law and practice. The forty-hour week is to be proposed, as an emergency measure, before the forty-eight-hour week has been accepted on the basis of an international convention.

Fundamentally connected with the regulation of the hours of work is the question of the weekly rest period and holidays. In 1919 the workers insisted on connecting the regulation of hours and the problem of weekly rest, for implied in the forty-eight-hour week is the period of continuous rest, though the 1919 convention recognizes that in uninterrupted industrial processes it is hardly possible to assure it. As a supplement to the Washington convention on this point, the Conference of 1921 passed a convention providing for a weekly rest period of twenty-four consecutive hours in industrial undertakings, and provided that all the staff as far as possible should be given a rest at the same time. The definition of "industrial undertakings" of 1919 was virtually carried over into the 1921 convention on weekly rest. During the 1921 Conference a recommendation urging a weekly rest period of twenty-four hours in commercial establishments was passed.[32]

Since 1919 it has been suggested that the Organisation undertake the preparation of a convention granting an annual holiday with pay. Owing to the basic relationship between the cost of production and wages, and owing to the fact that such holidays virtually constitute an increase in the cost of production, the Governing Body has never placed this question on the agenda of the Conference.

2. INDUSTRIAL HYGIENE

A second broad field of international labor standards is industrial hygiene. The dominating problems here are occupational diseases and the prevention of accidents. While the general health of the worker is a still broader question, the Organisation has been more ineffective in its efforts for health on the positive side than it has on the negative. In 1919 a recommendation was passed asking for the compulsory disinfection of goods infected with anthrax spores, but in 1921 the Conference felt that British experience with disinfection was yet immature and that a convention could not be adopted. Likewise, in 1919 a recommendation

[32] The problem of weekly rest in continuous processes has been studied by the Organisation since the beginning of its work. In 1925 a convention providing for a weekly suspension of work in glass manufacturing processes where tank furnaces are used failed of adoption. In 1933 the Conference will have before it the problem of weekly rest, with a four-shift system, in automatic glass manufacturing.

provided for the protection of women, young persons and children against lead poisoning. That governments should establish health and inspection services, and that the Berne Convention of 1906 prohibiting the use of white phosphorous in match manufacture should be ratified, were also recommended in 1919. A recommendation of 1921 suggests improvements in the living-in conditions of agricultural workers.

White lead received further attention in 1921 when a convention was adopted prohibiting its use, except where necessary and under conditions approved by competent authority after consultation with employers' and workers' organizations. While a part of the Organisation's program of social insurance, the convention of 1925 providing compensation for occupational diseases should, however, be mentioned here. The convention of 1925 prohibiting night work in bakeries is in reality a measure of industrial health, and the minimum wage-fixing machinery convention of 1928 must be classified likewise, as it applies where wages are exceptionally low and where workers' organizations are not developed. That sickness insurance involves the prevention of disease was laid down in the 1927 recommendation on the general principles of sickness insurance.

Factory inspection and accident prevention are essentially related and are fundamental in the problem of industrial hygiene. The 1923 recommendation on the general principles of inspection declares that inspection must work toward the prevention of accidents and diseases of workers, and that safety and health should be among its results. The same principles are expressed in the 1926 recommendation on the general principles of inspection of the conditions of work of seamen. However, the fundamentals of accident prevention were laid down in the conventions and recommendations on this subject adopted at the Twelfth Session of the Conference in 1929. The major recommendation on the subject takes note of the objectives stated in 1923 and of a resolution of the Conference in 1928 approving the "safety first movement." The recommendation defines industrial undertakings virtually as in the Washington hours convention, and asserts that the general principles of accident prevention should apply to agriculture as well as industry. While the legislative basis of

accident prevention is emphasized, research, the collection and exchange of information, vocational guidance, cooperation and consultation with the workers, workers' education and other measures are proposed.

A brief convention was adopted in 1929 requiring that packages or objects weighing more than one metric ton which are transported by vessels should have their weights or approximate weights plainly marked. A recommendation of the same Conference urges the prohibition by law of the supply or installation of power driven machinery without the safety devices required for such machines by national law. But the most complicated and detailed convention in the whole history of the Organisation was adopted at this time for the protection of dockers (or workmen engaged in loading and unloading ships). Two recommendations supporting this convention were passed at the same time which urged that members of the Organisation formulate reciprocity agreements or treaties for the protection of dockers, and that workers' and employers' organizations be consulted in the formulation of new regulations for their protection.[13]

c. WOMEN, CHILDREN AND YOUNG PERSONS

A group of humanitarian conventions designed to protect the more helpless victims of industrial conditions forms a practically complete sub-division of the general international code of labor protection. A Washington convention of 1919 provides maternity benefit for six weeks before and after childbirth; another prohibits

[13] The dockers convention was revised by the Conference of 1932, this being the first successful attempt to revise a labor convention. Many inapplicable details were removed from the convention, and a supplementary recommendation was adopted at the same time. Under the legal theory accepted as the basis of revision, both of the dockers conventions are valid, although Article 23 of the first convention provides that the ratification of a revising convention on this subject involves the denunciation of the old convention and that after the revising convention comes into effect the old convention is not open to ratification. Such provisions, of course, do not affect the ratifications of the old convention which are deposited before the revising convention comes into effect.

The 1931 Conference refused to revise the 1919 convention concerning the night work of women because it took the position that the British objections could be overcome by a more liberal interpretation of the convention and that the Belgian amendment was inconsequential. In April, 1932, the Governing Body agreed to ask the Permanent Court for an advisory opinion interpreting this convention on the point raised by the British. This is the first request in the history of the Labour Organisation for an interpretation of a convention, since the previous opinions given by the Court involved the interpretation of Part XIII and the general character of the Labour Organisation. See ILC, *Final Record*, 1931, pp. 325–58, 477.

the night work of women; another declares that children under fourteen must not be employed in public or private industrial undertakings; and another prohibits with exceptions the night work of young persons under eighteen. We have already mentioned the recommendation of this first Conference which demands the protection of women, children and young persons against lead poisoning. A 1920 convention provides that children under fourteen shall not be employed at sea.

The 1921 Conference adopted a number of measures for the protection of women and children. A recommendation suggests that women employed in agriculture receive the same maternity benefits as are laid down by the Washington convention dealing with women employed in industry and commerce; another recommendation modeled on a Washington convention suggests the prohibition of the night work of women in agriculture. A convention of this year prohibits the employment of children in agriculture when under fourteen except after school hours, and a recommendation stipulates that children who may be employed in agriculture at night shall have at least ten hours of rest during the night, and that those between fourteen and eighteen shall have at least nine hours of rest. It should perhaps be mentioned that the white lead convention of 1921 embodied the essential provisions of the 1919 recommendation protecting women and children against lead poisoning. Likewise in 1921 conventions were adopted providing that young persons under eighteen should not be employed as trimmers and stokers on vessels, and that the employment of such young persons at sea should be conditioned upon an annual compulsory medical examination.

A recommendation of 1926 declares that when fifteen or more emigrant women and girls are traveling unaccompanied a woman shall be sent along with them to secure the observance of their rights and to give moral assistance. The 1930 Conference included in a recommendation on forced or compulsory labor a provision that there should be no illegal employment of women and children in forced labor. The last actions of the Conference which fall into this group are the 1932 convention and recommendation on the employment of children in non-industrial occupations, which prohibit the employment of children under fourteen

or those over fourteen still required by national law to attend school.[34]

D. SOCIAL INSURANCE

Representative of the humanitarian side of the international labor movement and composing also a highly developed section of the labor code is the body of provisions relating to social insurance. The 1919 Conference asked, through a recommendation, that each member establish a system of unemployment insurance, but not before the 1933 Conference will this problem be on the agenda.[35] The 1919 maternity convention provides, as we have noted, six weeks of benefit before and after childbirth, and a recommendation of 1921 asks the extension of this benefit to women employed in agriculture. It was recommended in 1920 that each member establish for seamen a system of unemployment insurance, and a convention of the same year provides for an unemployment indemnity for seamen in case of loss or foundering of vessels. A 1925 convention establishes compensation for workmen and their dependents in case of industrial accident, and two recommendations supporting this convention suggest (1) a minimum scale of workmen's accident compensation and (2) the principles which the members should follow in settling jurisdictional disputes concerning such compensation. However, in 1921 the Conference had adopted a convention establishing the principle that agricultural wage-earners should be covered by legislation on accident compensation relating to accident compensation for other than agricultural workers, and a recommendation, adopted at the same Conference, urges that each member of the Organisation extend to agricultural wage-earners benefits equivalent to those received by workers in commerce and industry for sickness, invalidity, old-age and other similar social risks.

[34] The convention states that its provisions shall extend to employment not dealt with by the 1919, 1920, and 1921 conventions dealing with the employment of children in industry, at sea, and in agriculture, and that in determining the scope of the convention the national authorities shall consult the workers' and employers' organizations.

[35] There has been a great development of unemployment insurance legislation since 1919. It is upon the basis of this development that the Organisation has felt it possible to proceed to the adoption of a convention instead of retaining the present recommendation. The 1932 Conference adopted draft conclusions as a result of the first discussion on old-age, invalidity and widows' and orphans' insurance. This question has been placed on the agenda for 1933 for final discussion.

The Conference of 1925, moreover, adopted the fundamental convention dealing with occupational diseases, providing in such cases for compensation. The convention is based directly on the convention for compensation for accidents; it is stipulated that the principle involved in industrial accidents compensation shall be followed here, and that no less compensation shall be given for diseases than for accidents. The convention gives a minimum list of diseases and toxic substances and a list of corresponding industrial processes. A recommendation accompanying this convention urges each member to adopt a fuller list of industrial diseases and to provide a simple procedure by which the number of benefit causing occupational diseases may be increased. In 1927 two further important conventions on social insurance were adopted, one of which provides for sickness insurance in industry and commerce, affecting manual and non-manual workers, apprentices and domestic servants. Another convention with almost the same provisions covers agricultural wage-earners. Special schemes of non-state sickness insurance are allowed, and it is provided that no provision is to affect the Washington maternity convention. A recommendation was adopted at the same time outlining the general principles of sickness insurance which the members should follow in the application of the two conventions. The recommendation on accident prevention adopted in 1929 suggests the establishment of accident insurance institutions.

A convention closely related to the convention on compensation for industrial accidents was adopted in 1925 providing for reciprocity of treatment of national and foreign workers in matters relating to accident compensation. A recommendation embodying general principles supports this convention.[36]

E. WAGES

While the Treaty of Peace clearly gives the Organisation competence to deal with wages, it must be equally obvious that it is a subject which will be almost impossible to regulate internation-

[36] The Office and the workers' group adopted the principle in fact that it is impossible to distinguish clearly between occupational diseases and industrial accidents. This explains the close relationship of social insurance conventions and also the attention paid to health and disease prevention in the recommendations dealing with factory inspection and accident prevention.

ally. Not only would trade unionists themselves fear international control, but the employers would oppose it bitterly and most modern governments have been unwilling to enter the field. In view of such circumstances, the Organisation has engaged chiefly in investigation and the collection of information on wages. However, in 1928 a convention was adopted which provides that the members shall establish minimum wage-fixing machinery in trades or parts of trades in which wages are exceptionally low and in which the organization of workers is not developed, that is, where there is little chance of collective agreements being made. The ratifying states are bound to report annually detailed information as to the application of the convention. A recommendation supporting the convention suggests consideration of the standard of living, the consultation of workers and employers, the investigation of conditions needing wage regulation, and also that trades in which women are largely employed should be investigated particularly.

F. UNEMPLOYMENT

No problem has more distressed the post-war world than economic depression and unemployment. The Organisation, while intended to function in the atmosphere of prosperity and idealism, did so only in 1919. Considering the general helplessness of the world in the face of unemployment, it is not surprising that the Organisation has provided no panacea. Its investigation of the question has been indefatigable; its resolutions and discussions on the subject frequent. The Office has tended to support the theory of international trade unionism that increased purchasing power among the workers is a better policy than cutting the cost of production by the diminution of wages, the theory held by the employers.

The 1919 unemployment convention provides that full information shall be communicated periodically to the Labour Office, and that there shall be free public employment agencies. A recommendation of the same year suggests the abolition of fee-charging employment agencies, mutual agreements as to the recruitment of labor abroad, the establishment of unemployment insurance, and the coordination of public works. A convention of 1920 concern-

ing the facilities for finding employment for seamen provides for the abolition of fee-charging agencies, and for the international coordination by the Labour Office of national employment systems. A recommendation of 1921 relating to agriculture, after noting the Washington decisions as to unemployment, suggests that the members undertake to secure technical improvement and increase in cultivation, the settlement of additional land, provide temporary work and supplementary industries for agricultural wage-earners, and to encourage agricultural cooperative societies.[37]

G. EDUCATION AND SOCIAL HYGIENE

Strictly speaking, education, except as it is technical and vocational, is not within the competence of the Organisation. But each time the Organisation has attempted to protect children from economic exploitation, it has been faced with various aspects of the problem of education. In the conventions excluding children and young persons from industry, employment at sea, and in agriculture, the conventions exempt from their provisions technical schools, training ships, and provide as to agriculture that work shall not interfere with school attendance. A recommendation of 1921 urges the development of vocational education in agriculture, and in 1925 another recommendation dealing with compensation for industrial accidents provides for vocational re-education. In 1929 the recommendation dealing with accident prevention stressed the importance of educating the workers in the methods of preventing accidents. A 1932 convention stipulates that children over fourteen shall not be employed in non-industrial occupations if they are still required by national law to attend school.

From the outset the Organisation has recognized that the protection of labor involves certain problems of social hygiene. Its most important step in this direction was the adoption in 1924 of a recommendation dealing with the utilization of workers' spare time. This recommendation is based in part on the principle that the limitation of the hours of work provided in the Washington convention involves the proper use of spare time, very much as the principle of the weekly rest is a corollary of the principle of the short working week. This recommendation urges collective agreements and laws to prevent workers from engaging in work beyond the normal period allowed, and that spare time should be as continuous as possible. It recommends the establishment of public baths, swimming facilities, action against alcohol abuse, tuberculosis, venereal disease, and gambling.[38] The governments should have definite housing policies, and should encourage the establishment of institutions for the utilization of spare time. Thus domestic economy should be taught, sports encouraged, and technical and general education provided.

[37] The program of the Organisation for the relief of unemployment has developed tremendously since the economic crisis which began in the fall of 1929. This recent program is found more in the *Report of the Director* to late Conferences, especially in the *Report* to the 1932 Conference, and in the 1932 resolutions of the Governing Body, than in conventions and recommendations. This is because the unemployment crisis is regarded as exceptional. The Organisation has recognized, in form at least, that since the cure of unemployment rests on factors which are economic it is beyond the immediate jurisdiction of the Organisation. It has, however, called upon the League of Nations to undertake international consideration of the economic questions involved in the cure of the crisis. This is illustrated particularly by the workers' resolution on the crisis passed by the Conference of 1932. This last Conference also adopted draft conclusions which may lead to a convention in 1933 providing for the abolition of fee-charging employment agencies.

H. MIGRATION

Certain of the members of the Peace Conference Commission which drafted Part XIII undoubtedly had in mind the international control of migration, and it is fairly clear that the idea was present in the debates of the Washington Conference. The governments of Italy, Poland, France, and Japan, particularly, and the workers' group in the Conference and Governing Body have attempted with some success to direct the energies of the Organisation into the field of migration. However, owing to the fact that most immigration countries since the war have been moving toward policies of restriction, the Organisation has secured what it has in this field only by avoiding carefully the fundamental problem of the right of workers to migrate in search of better conditions.

The reciprocity measures of the Organisation fall definitely into the field of migration. In 1919 the unemployment convention asked for reciprocity in unemployment insurance, the recommendation on unemployment urged that recruiting of foreign

[38] The workers have had occasion frequently in the discussion of such questions as these to rebut the implication or the assumption that wage-earners are particularly subject to social evils.

workers be done only by agreement between the states concerned, and another recommendation urged general reciprocity of treatment by members of the Organisation.[39] The 1920 convention on employment facilities for seamen provides for equality of treatment by public employment offices, and a recommendation of 1922 urges the periodical communication to the Labour Office of migration information. A convention adopted in 1926 established rules for the simplification of the inspection of emigrants on board ship, and a recommendation of the same Conference makes provision for the protection of emigrant women and girls.

I. NATIVE LABOR

The problem of native labor has been touched so far only by the 1930 convention and recommendations establishing the principle of the suppression of forced or compulsory labor. Most of this convention is occupied with safeguards for native labor during the transition period in which the convention does not ask for the complete suppression of forced labor. Two recommendations adopted at the same time urge additional safeguards for peoples in the early stages of industrial development who are under the control of Western powers.

J. INSPECTION

The Treaty of Peace asked for the establishment of systems of labor inspection in order to secure the enforcement of protective legislation. The Organisation has frankly assumed that labor inspection is absolutely necessary, not only to secure the enforcement of national laws, but also to insure the application of conventions when ratified by members of the Organisation. A recommendation in 1919 dealing with health services suggests inspection and government health services for the workers, but in 1923 the major action of the Organisation was taken when an elaborate recommendation on this subject was adopted. This recommendation stresses the necessity of enforcing conventions, of laying down international standards, and the re-organization of national

[39] It should be observed that migration and social insurance are very closely connected, as social insurance can only be completely effective through reciprocity of treatment. On the other hand, social insurance tends to stabilize the working population and to prevent the migration of workers.

systems in accordance with the recommendation. While large powers are suggested for inspectors to make their work effective, the principle is enunciated that inspection should result in the increased safety and health of the workers, and the prevention of accidents and industrial diseases.[40] Another recommendation was adopted in 1926 laying down on much the same lines as in 1923 the general principles of inspection of the conditions of work of seamen. The recommendation of 1928 dealing with the application of minimum wage-fixing machinery emphasizes the importance of inspection, as had been done in 1923, in enforcing the minimum conditions established in each state. In 1929 the recommendation dealing with accident prevention suggests the collaboration of workers and employers, as in the recommendation of 1923, in the inspection regarded as necessary for the prevention of accidents. The 1930 convention on the hours of work in commerce and offices asks for effective inspection for the enforcement of the convention.

K. AGRICULTURAL WORKERS AND SEAMEN

So far we have traced the development of the international labor code by the subject matter of the protection afforded. From another point of view, it might be analyzed according to the type of worker or prospective worker safeguarded. The principle of the Organisation has been to treat agricultural workers and seamen in separate conventions and recommendations, and the latter even in separate conferences.[41] No distinctly separate conferences have been held for agricultural workers, unless the Conference of 1921 can be so designated. Yet, from the standpoint of the Organisation, the substance of the code is of vastly greater importance than the type of worker covered. The separate treatment of seamen and agricultural workers is primarily a procedural device made

[40] As an example of the interrelation of conventions, it should be noted that the 1925 convention on night work in bakeries follows the 1923 recommendation on inspection in its provisions as to enforcement.

[41] The same is true to a degree of commercial or salaried employees, as the 1930 convention on the hours of work in commerce and offices shows. However, the 1919 convention on the employment of women before and after childbirth applies to both industry and commerce. The same is true of the 1927 convention on sickness insurance, though in this case agricultural workers are protected by a separate convention. Since fishermen and workers in inland navigation have been considered by the Organisation hardly at all, any future action for their protection will naturally be in the form of particular conventions and recommendations.

necessary because of the demands of shipowners and seamen for separate Conferences and because of the necessity of technical advisers.[42]

A few measures only must be mentioned concerning the protection of seamen. It is specifically provided that the accidents compensation convention of 1925 does not apply to fishermen and seamen, and a later convention is promised. In 1926 a convention was adopted which established in some detail the general contents and the form of seamen's articles of agreement. The repatriation of seamen was established in a convention adopted at the same Conference, and a recommendation was also adopted which provides for the repatriation of masters and apprentices. While it is specifically stated that the sickness insurance convention of 1927 does not apply to seamen, a later convention is promised.[43]

V. Other Bases of Interrelation

A. Special Conditions

The early conventions of the Organisation are united by the recognition of special conditions in countries of retarded industrial development. Article 405, paragraph 3, and Article 427 specifically state that such exceptions should be given, but since 1921 there has been little recognition of the special circumstances in Asiatic countries, largely because of the unwillingness of these countries to admit their industrial conditions but also because of the opposition of the workers' group to the inclusion of special conditions in the conventions. The hours convention of 1919 makes special provision for Japan and India, and it is provided that the con-

[42] It is difficult to over-estimate the importance of the technical advisers in the Conference. Each delegate is entitled to two advisers on each item on the agenda. The agenda for this purpose is formal and legal, consisting of those items definitely placed before the Conference by the action of the Governing Body and which may result in conventions or recommendations. The advisers carry most of the work of the committees on the items on the formal agenda and lead the debates in the Conference on the reports of the committees. The delegates themselves, who tend toward continuous service from Conference to Conference, are frequently occupied with constitutional and political questions before the Organisation. This is particularly true of the workers' and employees' delegates.

[43] The agenda of the 1929 maritime session (13th), for which no second discussion has yet been held, consisted of the following items, upon which draft conclusions were adopted: the hours of work at sea, the responsibility of shipowners and sickness insurance for seamen, seamen's welfare in port, and minimum professional capacity certificates. The Office proceeded normally with the preparation for the second discussion, the questionnaires were sent out and the final reports (Blue Reports) were prepared. Owing to the numerous postponements of this Conference, the preparation for it will have to be repeated in all probability.

vention shall not apply to China, Persia, and Siam. Greece and Rumania, furthermore, were allowed a longer period than other powers before the convention should come into effect. In the 1919 convention prohibiting the night work of women it is provided that India and Siam may suspend the convention in establishments not defined as factories by national law. The convention of the same year providing a minimum age of admission to industry makes special provisions for Japan and India, granting them a younger age than in Western countries. The convention prohibiting the night work of young persons adopted at Washington stipulates that Japan need not apply it until 1925, and that in India it will apply only to factories as defined by national law. Special conditions as to the coastal trade of Japan and India were made in the 1921 convention dealing with the minimum age of trimmers and stokers, and in the 1926 convention on seamen's articles of agreement Indian country craft were excluded.[44] In the two sickness insurance conventions of 1927 it is stated that the convention shall not apply in sparsely settled areas and where the means of communication are not developed. This provision was included for the benefit of Latin American countries, and the only European country which may take advantage of it is Finland. Finally, special conditions were allowed India in the 1932 convention on the employment of children in non-industrial occupations.

B. Special Agreements

Another thread uniting the conventions and recommendations is the encouragement of special bilateral treaties which will aid in the more effective application of the conventions. Such treaties are usually involved in conventions requiring reciprocity of treatment of national and foreign workers. Provisions of the conventions, therefore, give official approval and encouragement to the pre-war policy of bilateral labor treaties.[45] The unemployment

[44] Had the 1920 convention on the regulation of the hours at sea been adopted by the Conference there would have been special provisions for Indian seamen, the lascars. The convention, of course, was not adopted, but when the second discussion on the 1929 draft conclusions is held, the same question must naturally arise.

[45] The first bilateral labor treaty was between France and Italy in 1904. It should be noted, however, that reciprocity on the basis of bilateral supplementary agreements need not be limited to the equality of treatment of national and foreign workers, but may be extended to reciprocity in conditions. Thus the dockers conventions, both the original and the revised convention, provide for special reciprocity agreements as to the conditions of safety established by the convention.

convention of 1919 asks that the Labour Office coordinate national employment agencies in agreement with the members. The unemployment recommendation of 1919 urges that the recruitment of foreign workers shall be regulated by mutual agreement, and the recommendation of the same year dealing with reciprocity suggests that agreements between the members provide for the equal treatment of national and foreign workers. A 1920 recommendation provides that riparian states should regulate by agreement inland navigation in conformity with the Washington hours convention. The convention of 1920 on employment facilities for seamen lays down the principle that the Office shall coordinate national systems in agreement with the governments or organizations of each country.[46]

The recommendation of 1922 concerning migration provides that the members shall by special agreements formulate certain definitions which will lead to international comparison of migration statistics. The convention of 1925 dealing with equality of treatment in accident compensation urges special treaties between the members as to the payment of benefits for accidents to workers temporarily on the territory of the other. There is also a provision in the 1926 convention on the simplification of emigrant inspection by which inspectors other than that of the nationality of the vessel may be carried on board if special agreements so provide. In 1929 and in 1932 reciprocity provisions were included for the protection of dockers.

C. TRADE UNIONS AND COLLECTIVE AGREEMENTS

Without organizations of employers and workers the Labour Organisation would be a body without a soul, since all non-government representation is based on the principle of economic or trade association. It is natural, therefore, to find running throughout the conventions and recommendations provisions requiring the governments to consult the organizations of employers and workers. This is particularly the case where special derogations of conventions are allowed under national law,[47] and where conditions which are better than those provided for in the convention are to be established. This is true likewise in the recommendations dealing with inspection and accident prevention, as is the case with the recommendation on the utilization of spare time. While a strong trade union organization is likely to regard the collective bargain as a substitute for legislation, the Organisation has consistently stood for the principle of the collective agreement, and in particular that it should be given the force of law by government recognition. Instances of this approval are found in the 1930 convention on the hours of work in commerce where it is provided that collective agreements may be recognized in the determination of exceptions to the convention, and in the 1931 convention on the hours of work in coal mines where collective agreements may provide for overtime over and beyond that specifically allowed in the convention.[48]

[46] The 1919 unemployment convention mentions only agreement by the Office with the governments of the members; the 1920 convention goes farther and suggests agreement with organizations of workers and employers in addition to the governments. These two provisions are the only ones of this kind in the total body of conventions.

VI. The Effectiveness of the International Labor Code

An objective evaluation of the effectiveness of the International Labour Organisation is virtually impossible. Whatever tests may be devised break down in the consideration of the exceptions necessary to such schemes. In this process of evaluation one must remember (1) that there would have been progress in labor legislation without the Organisation, and that in fact there was a steadily mounting acceleration of labor legislation from the middle of the nineteenth century to the World War; (2) that the simple fact that legislation has been passed by a member of the Organisation, that is, since 1919, does not necessarily show the influence of the Organisation, and that neither reports on the application of recommendations nor the ratification of conventions based on pre-existing legislation show the influence of the Organisation on national legislation as such; (3) that conventions and recommendations tend to be based on the common or average principles of

[47] The 1932 convention on the employment of children, however, provides for the consultation of employers' and workers' organizations in determining the positive *scope* of the convention.

[48] The Office leans toward the continental view of the collective agreement as a contract enforceable at law, or at least subject to formal governmental approval. British opposition in particular to requiring governmental approval of collective agreements is based finally on the view that the agreement is simply a gentleman's agreement.

existing legislation, and that much of the work of the Organisation is in fact an effort to maintain standards already existing rather than an effort to secure modification of legislation; (4) that the type of country ratifying a convention is important, and that the ratification by a country with advanced legislation may show less influence than a ratification by a country with backward legislation or which is more or less isolationist in policy; and (5) that while many ratifications are deferred on purely technical grounds, many ratifications have not resulted in the actual enforcement of conventions.[49]

However, one's attitude toward the Organisation depends essentially on two propositions. The first is: What is thought of international social cooperation in general? The Organisation rests on the proposition that political cooperation is not enough and that universal peace must be built on the principle of international economic and industrial solidarity. In the second place, and perhaps even more essential than the first, is the question of attitude toward the aspirations of European non-revolutionary trade unionism. This trade unionism, that of the International Federation of Trade Unions at Berlin, is essentially socialistic in aim, being from the outset closely connected with the Second International and now opposed to the principles of communism and the Third International. If one is agreed that these two propositions are worthy of support it does not matter greatly in a final analysis whether the Labour Organisation has been to the present a great success.[50]

The position of the Organisation is that the number of ratifications is only a partial indication of its great influence; but the position of the critics of the Organisation is that it has not only failed to secure international uniformity in labor conditions, but

[49] One of the most detached attempts to evaluate the Labour Organisation is found in *National Industrial Conference Board,* "The Work of the International Labour Organisation," New York, 1928, in the concluding chapter. This evaluation goes on the assumption that the effort of the Organisation is directed toward the elimination of international competition by the use of labor, and in evaluating the Organisation it considers its effect from this point of view on the leading competitive industrial powers which are members of the Organisation. On the point here mentioned the National Industrial Conference Board study concludes that the Organisation has not had much effect on international competition.

[50] Structurally, the Labour Organisation is committed to a reformed capitalism as employers' delegates are a permanent part of the Conference and Governing Body, but M. Mertens, Belgian workers' delegate and president of the workers' group in the Conference, said in effect in 1932 that the program of the Organisation could only be regarded as a transition stage in the evolution toward the socialist state, ILC, *Provisional Record,* 1932, No. 17, p. 186.

claims as the result of its work much labor progress which came or would have come regardless of the activity of the Geneva Organisation.[51] As a tentative conclusion it may be said that the usefulness of the Organisation in the formulation of legislative standards and in research should not be questioned, and that its future accomplishment in the securing of ratifications of conventions is not likely to be anything like that contemplated by the Treaty of Peace. One must not forget that the Organisation has worked in an atmosphere of continual economic depression and unrest, while the framers believed it would work in a world of cumulative prosperity, stable money, predictable markets, and inexhaustible profits,—a world, withal, which has ceased to exist.

The measures taken by the Organisation to maintain the conventions after ratification may be called a system of gentlemanly sanctions or measures of control. Under Article 408 each member which ratifies a convention is obliged to submit an annual report in a form provided by the Governing Body on the application of the convention. These reports have been subjected to particular observation since 1926. A committee of the annual Conference takes the results of the investigation of a committee of experts and makes certain diplomatic observations on the failure of certain states either to report properly or to conform their national legislation with the terms of the conventions. These criticisms have resulted in some improvement, but the work of the committee has completely refuted the argument made at least by implication early in the history of the Organisation that ratification in itself was an evidence of labor progress. It has become apparent that many countries have ratified conventions only with the intention of passing laws to carry them out at a later date. Thus, the British who were largely instrumental in the establish-

[51] It is quite natural that the Labour Office should want to do itself any evaluations of the effectiveness of the Labour Organisation. At the same time, however, this indicates a point of great weakness in the program of international labor cooperation. Some members of the staff feel that it was a mistake to draw up the now famous or infamous chart of ratification and non-ratification. While the Organisation works constantly to secure ratification, it disparages the obvious conclusions to be drawn from the small number of ratifications, especially of the more significant conventions by the more significant powers. After all, one cannot deny that no matter how heroic the defense of international institutions, the strength of such institutions is the measure of support given them by the governments. Just as in the case of the League of Nations, the failure of governments to give the support contemplated by the Treaty is not *per se* an argument against the Labour Organisation.

ment of this check on the annual reports have in large measure escaped the reproach formerly leveled against them that while they were not ratifying other countries in reality less able to were leading the way. The measures of control outlined by Articles 409 and following seem largely inapplicable in the present stage of world government.

The table of ratification appended to this discussion must be studied subject to several important qualifications. The first is that the ratification of the conventions proposed by the League of Nations on economic problems has not been as widespread as of those proposed by the Labour Organisation. A second point of importance is that all conventions are not of equal importance to all members of the Organisation, such as the forced labor convention of particular interest to colonial powers, the maritime conventions of particular interest to shipping states, and the social insurance conventions to highly industrialized members of the Organisation. In the third place, the fact that certain federal states (notably Canada and Australia) have treated many conventions as recommendations, which is allowed under the terms of the Treaty, has cut down the number of ratifications. In the fourth place, it must be remembered that the ratifications deposited with the Secretary General of the League of Nations represent a tremendous saving of international effort, which can easily be seen if the same network of international obligations were attained by bilateral treaties instead of multilateral conventions. And in the fifth place, it must be noted that legislation passed since 1919 in certain countries has been markedly influenced by the Labour Organisation. Among such countries should be mentioned Belgium, Bulgaria, Czechoslovakia, Estonia, Finland, Greece, India, Japan, Latvia, Poland, Rumania, and a number of Latin American states. While China has ratified few conventions, the Organisation has certainly been a stimulus to further legislative activity.

In order to estimate accurately the effectiveness of the work of the Organisation, the legislation of each country since the war would have to be investigated as to whether the Labour Organisation has had any influence in that particular country as to particular legislation. One would have to ascertain also whether the

existence and work of the Organisation has prevented the repeal of legislation. And finally, and perhaps equally important, the content of hundreds of collective agreements would have to be examined in order to detect its possible influence in practical labor conditions regardless of the formal ratification of the international standards laid down by the Organisation.

PART XIII (TREATY OF VERSAILLES)

LABOUR

SECTION I.

ORGANISATION OF LABOUR

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:

CHAPTER I.

ORGANISATION

Article 387

A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organisation, and hereafter membership of the League of Nations shall carry with it membership of the said organisation.

Article 388

The permanent organisation shall consist of:

(1) a General Conference of Representatives of the Members and,

(2) an International Labour Office controlled by the Governing Body described in Article 393.

Article 389

The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article.

Article 390

Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government

Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated.

Article 391

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

Article 392

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

Article 393

The International Labour Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

The Governing Body of the International Labour Office shall be constituted as follows:

Twelve persons representing the Governments;

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

The period of office of the Members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall

fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

Article 394

There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

Article 395

The staff of the International Labour Office shall be appointed by the Director who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

Article 396

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.

Article 397

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on

the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

Article 398

The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

Article 399

Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

Chapter II.

Procedure

Article 400

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 389.

Article 401

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

Article 402

Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the

Director, who shall circulate it to all the Members of the Permanent Organisation.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

Article 403

The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

Article 404

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

Article 405

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial condi-

tions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

The above Article shall be interpreted in accordance with the following principle:

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

Article 406

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

Article 407

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organisation to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

Article 408

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

Article 409

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

Article 410

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Article 411

Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, com-

municate with the Government in question in the manner described in Article 409.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

Article 412

The Commission of Enquiry shall be constituted in accordance with the following provisions:

Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

Article 413

The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether

directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 414

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

Article 415

The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

Article 416

In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

Article 417

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

Article 418

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any,

of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

Article 419

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, 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.

Article 420

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

Chapter III.

General prescriptions

Article 421

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

Article 422

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

Article 423

Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

Chapter IV.

Transitory provisions

Article 424

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Article 425

Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

Article 426

Pending the creation of a Permanent Court of International Justice disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX

FIRST MEETING OF ANNUAL LABOUR CONFERENCE, 1919

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organising Committee will consist of seven Members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.

Agenda:

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployment.

(3) Women's employment:

- (*a*) Before and after child-birth, including the question of maternity benefit;
- (*b*) During the night;
- (*c*) In unhealthy processes.

(4) Employment of children:

- (*a*) Minimum age of employment;
- (*b*) During the night;
- (*c*) In unhealthy processes.

(5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

SECTION II.

GENERAL PRINCIPLES

Article 427

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great

end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognise that differences of climate, habits, and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.