

# REPORT II (1)

International Labour Conference

TWENTY-NINTH SESSION

MONTREAL, 1946

## Constitutional Questions

### Part 1: Reports of the Conference Delegation on Constitutional Questions

Second Item on the Agenda



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## CHAPTER II

### THE INCORPORATION OF THE DECLARATION OF PHILADELPHIA IN THE CONSTITUTION OF THE I.L.O.

15. The aims and purposes of the International Labour Organisation have already been authoritatively redefined by the Conference in the Declaration of Philadelphia, of which President Roosevelt said that it "sums up the aspirations of an epoch which has known two world wars" and "may well acquire" an historical significance similar to that of the Declaration of Independence of the United States of America. The Declaration was unanimously adopted by the Conference, after full consideration of its terms by a special committee, on 10 May 1944. Two days later the Conference also adopted unanimously, on the motion of the Government representatives of the United States, a resolution contemplating that the terms of the Declaration would be embodied in the peace settlement. In endorsing the terms of the Declaration on behalf of the United States when addressing the delegates to the Philadelphia Session of the Conference at the White House on 17 May 1944, President Roosevelt expressed the hope that they would also be endorsed by all of the United Nations. The most appropriate manner in which to give effect to the desire expressed by the Conference at Philadelphia that the Declaration should be embodied in the post-war settlement would be to incorporate its provisions in the Constitution of the Organisation. The Delegation accordingly recommends that Article 1 of the Constitution of the Organisation, which defines the purpose of the I.L.O. as being the promotion of the objects set forth in the Preamble to the Constitution, should be amended by the addition of a reference to the Declaration of Philadelphia, and that the text of the Declaration of Philadelphia should be annexed to the Constitution.

16. In making this recommendation the Delegation wishes to place on record its understanding of the relationship between the provisions of the Declaration of Philadelphia and subsequent developments in regard to the international co-ordination of economic and social policies for the attainment of "better standards

of life in larger freedom" and more particularly the creation of the Economic and Social Council of the United Nations.

17. The Declaration of Philadelphia asserts the primacy of the social objective in international policy; it defines this objective as being the attainment of conditions in which "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity"; it affirms the "responsibility of the International Labour Organisation to examine and consider all international, economic and financial policies and measures in the light of this fundamental objective" and provides that "in discharging the tasks entrusted to it the International Labour Organisation, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate".

18. Having set forth these general principles, the Declaration lists a number of specific objectives. It recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: full employment and the raising of standards of living; the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement; policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection; the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures; the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care; adequate protection for the life and health of workers in all occupations; provision for child welfare and maternity protection; the provision of adequate nutrition, housing and facilities for recreation and culture; and the assurance of equality of educational and vocational opportunity.

19. The Declaration expresses confidence that "the fuller and broader utilisation of the world's productive resources necessary

for the achievement of the objectives set forth" therein "can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations, to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade", and it pledges "the full co-operation of the International Labour Organisation with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples".

20. The importance and significance of this pledge of full co-operation with other international organisations were emphasised by Mr. Walter Nash when presenting to the Conference as its President the Report of the Special Drafting Committee on the Declaration which sat under his chairmanship. The pledge, he said, "indicates clearly that the Organisation realises the part which other international agencies will be called upon to play, and that its own part, great as it may be in the treatment of social questions and in defining the social objective, is only a share of the task to be accomplished".<sup>1</sup> Similar language was used by President Roosevelt when addressing the members of the Conference at the White House on 17 May 1944: "it will be your responsibility to promote these objectives through your own Organisation and through such international agencies as may be created".<sup>2</sup>

21. The general pledge of full co-operation within the new framework of international organisation which was formulated in the Declaration of Philadelphia in anticipation of subsequent developments has been more specific in later I.L.O. decisions and notably in the resolution concerning the relationship between the International Labour Organisation and the United Nations unanimously adopted at the Paris Session of the Conference on 3 November 1945, which, in welcoming the entry into force of the Charter of the United Nations, pledged the full co-operation of the I.L.O. with the United Nations in pursuance of the objectives set forth in the Charter, the Constitution of the International Labour Organisation and the Declaration of Philadelphia.<sup>3</sup>

22. These successive decisions make it clear that the functions attributed to the International Labour Organisation by the terms of the Declaration of Philadelphia differ in character from the co-

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<sup>1</sup> International Labour Conference, 26th Session, Philadelphia, 1944: *Record of Proceedings* (Montreal, 1944), p. 188.

<sup>2</sup> I.L.O.: *Official Bulletin*, Vol. XXVI, No. 1, 1 June 1944, p. 120.

<sup>3</sup> International Labour Conference, 27th Session, Paris, 1945: *Provisional Record*, No. 31, p. xiii.

ordinating responsibilities which have been entrusted to the Economic and Social Council by the Charter of the United Nations and have been designed from the outset to be exercised within a wider framework of co-ordinated effort to attain "better standards of life in larger freedom".

23. In view of the proposed incorporation in the Constitution of the Organisation of the Declaration of Philadelphia, it would seem unnecessary to retain in the Constitution Article 41, which sets forth certain methods and principles for regulating labour conditions which were regarded in 1919 as being of special and urgent importance. Certain parts of this article no longer correspond to current conditions, and in the judgment of the Delegation the simplest and most convenient course to follow would be to omit the article. The Delegation understands that if the article were to be merely omitted from the amended Constitution of the International Labour Organisation without being formally abrogated, such force as it may still have as a provision of the Treaty of Versailles and of the other peace treaties concluded after the First World War would not be impaired, and it wishes to emphasise that none of the methods and principles set forth therein should be regarded as having lost any of their original importance except in so far as the standards which they envisage have been attained or surpassed.

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## CHAPTER III

### AMENDMENTS TO THE CONSTITUTION OF THE I.L.O. CONSEQUENTIAL UPON THE DISSOLUTION OF THE LEAGUE OF NATIONS

24. The second group of amendments recommended by the Delegation consists of amendments consequential upon the dissolution of the League of Nations. The amendments to the articles of the Constitution dealing with membership, finance, and the procedure for future amendments which were approved by the Conference in Paris deal only with the most urgent of the problems arising from the dissolution of the League, and it is now necessary to amend the other articles of the Constitution which contain references to the League.

25. Certain of these references are of a general character, and the most convenient course would appear to be to omit them. The Delegation accordingly recommends that the reference to the League of Nations contained in the opening paragraph of the Preamble of the Constitution should be omitted, that the provision contained in Article 6 that the International Labour Office shall be established at the seat of the League of Nations "as part of the organisation of the League" should be abrogated, and that the present Article 12, which provides that "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", should be deleted.

26. Apart from these general references to the League of Nations, the Constitution entrusts a number of specific functions to the Council and Secretary-General of the League, namely (i) the function attributed to the Council of the League by Article 7, paragraph 3, of deciding any question as to which are the States of chief industrial importance; (ii) the chancery functions in connection with Conventions and Recommendations entrusted to the Secretary-General of the League by Articles 19, 20 and 21 of the Constitution; and (iii) the functions in connection with Commissions of Enquiry entrusted to the Secretary-General by Articles 26 and 29 of the Constitution. The dissolution of the League

makes it necessary to make alternative arrangements for the discharge of these functions.

27. The jurisdiction of the Council of the League to decide any question which may arise in regard to the determination of the eight States of chief industrial importance has not been invoked since 1922, and it has for a number of years been the practice for such questions to be determined by the Governing Body. While it is improbable that any system for the selection of the eight States would give universal satisfaction, the existing arrangements have worked reasonably well in practice. The Delegation therefore recommends that paragraph 3 of Article 7 of the Constitution should be so amended as to confer formally upon the Governing Body the powers which it has hitherto exercised upon a *de facto* basis. It considers that it would be equitable to include in the proposed amendment a requirement that the Governing Body shall make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are impartially considered by a committee before being decided by the Governing Body.

28. Articles 19 and 20 of the Constitution of the Organisation entrust certain chancery functions in connection with Conventions and Recommendations to the Secretary-General of the League of Nations. He is to communicate certified copies of Conventions and Recommendations to Members, to receive and register ratifications of Conventions, and to receive information on the action taken on Recommendations. The Philadelphia and Paris Sessions of the Conference adopted resolutions providing for the provisional discharge of these functions by the Director as an emergency measure supplementary to the procedure provided for in the Constitution. The Delegation recommends that Article 19 of the Constitution should now be amended so as to make the Director of the International Labour Office responsible in future for the duties hitherto entrusted to the Secretary-General of the League of Nations by that article.<sup>1</sup> The Delegation fully recognises the importance from a general international standpoint of providing for the registration of international labour Conventions with a general treaty register and it accordingly recommends that Article 20 of the Constitution of the Organisation should be amended to require the Director of the International Labour Office to communicate ratified Conventions to the Secretary-General of the United Nations for registration in accordance with the provisions of Article 102 of the Charter. The proposed amendments to Articles 19 and 20 involve consequential amendments in Article 21, which relates to Con-

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<sup>1</sup> More far-reaching amendments to Article 19 are proposed in Chapter V ("Conventions and Recommendations"); see paragraphs 48 to 54.

ventions agreed upon by certain Members of the Organisation after failure to secure the majority necessary for adoption by the Conference as an international labour Convention.

29. These amendments to Articles 19 and 20 also involve consequential amendments in the final articles of all the existing international labour Conventions and make it necessary to revise the standard form for the final articles to be included in future Conventions. All of the Conventions adopted at the first 25 sessions of the Conference include provisions, the texts of which vary, in virtue of which their coming into force for any Member of the Organisation presupposes the registration by the Secretary-General of the League of Nations of that Member's ratification; similarly, denunciation by a Member only takes effect on registration by the Secretary-General of an act of denunciation communicated by that Member. A few of the Conventions also provide for the registration by the Secretary-General of declarations defining the extent of the obligations undertaken by ratification. In accordance with the principle underlying the amendment to Article 19 of the Constitution proposed in the preceding paragraph, the Delegation considers that these functions should be transferred from the Secretary-General to the Director, but that the Director should be required to communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, acts of denunciation and declarations. The Delegation accordingly recommends the adoption by the Conference at its next session of a Convention providing for the revision of the relevant provisions of the existing Conventions. The Delegation also considered that the proposed Convention should contain provisions deleting the references to the League of Nations and the Treaty of Versailles contained in the existing Conventions and substituting where necessary appropriate references to the Constitution of the International Labour Organisation. The text of the proposed revising Convention recommended by the Delegation is set out in Appendix II to this Report.<sup>1</sup> The Delegation also recommends the modification of the standard form for final articles to be included in future Conventions on the basis of the same principles. The text proposed by it will be found in Appendix III to the present Report. A complication arises in respect of Conventions which may be adopted at the forthcoming maritime session of the Conference at Seattle

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<sup>1</sup> A more detailed technical explanation of its provisions will be found, in International Labour Conference, 27th Session, Paris, 1945, Report IV (1): *Matters Arising out of the Work of the Constitutional Committee, Part I: The Relationship of the I.L.O. to Other International Bodies* (Montreal, 1945), pp. 116-121.



in June next, which will take place prior to the discussion of constitutional questions at the September session of the Conference in Montreal. It will therefore be necessary to deal on an emergency basis with the question of the procedure to be adopted for the ratification and denunciation of such Conventions, and the Delegation suggests that the most appropriate course would be to submit to the Seattle Conference for inclusion in any Conventions adopted by it the new standard form of the final articles for inclusion in future Conventions which the Delegation recommends in Appendix III.

30. Articles 26 and 29 of the Constitution of the Organisation entrust the Secretary-General of the League of Nations with certain functions in connection with the Commissions of Enquiry provided for in Articles 25 to 34 of the Constitution. In virtue of Article 26 (4) it is the Secretary-General who, if the Governing Body decides to refer a complaint to a Commission of Enquiry, is responsible for nominating the persons who are to constitute the Commission of Enquiry. In virtue of Article 29 he is responsible for the communication of Commission of Enquiry reports to the Governments concerned and for their publication, and the Governments concerned are to inform him whether or not they accept the recommendations contained in such reports. The Delegation recommends that the Constitution should be amended to transfer to the Governing Body the function of nominating the members of Commissions of Enquiry and to transfer to the Director of the International Labour Office the functions of communicating and publishing the reports of Commissions of Enquiry and receiving the replies of Governments.

31. The Constitution of the Organisation also contains provisions concerning the seat of the Office and the place of meeting of the Conference, which will require modification in view of the dissolution of the League.

32. The Delegation did not consider it within its competence to make any recommendation in regard to the future seat of the International Labour Office, but it took note with the greatest satisfaction of a statement made by the representatives of the Swiss Government that the International Labour Office would be most welcome in Geneva at any time and that the Swiss Government would be glad to enter into an agreement with the Organisation ensuring that it will continue to enjoy, after the dissolution of the League of Nations, the full independence necessary for the effective discharge of its international responsibilities. It is unnecessary that the Constitution of the Organisation should define the seat of the Office, and the Delegation accordingly recommends that there should

be substituted for the present Article 6, which provides that the Office shall be established at the seat of the League, a provision indicating the procedure to be followed in the event of any change of seat being thought desirable. The Office was established at Geneva in 1920 and, in consequence, has its seat there until that seat is changed by a competent decision. For a formal transfer of the seat of the Office, as distinguished from the establishment of a working centre such as that set up in Montreal in 1940, a decision by the Conference would appear to be desirable, and in view of the importance of the matter it would seem appropriate that a two-thirds majority should be required for such a decision. The Delegation accordingly recommends that the Constitution be amended to provide that any change in the seat of the International Labour Office shall be approved by the Conference by a two-thirds majority. The Delegation considers that wherever the seat of the Office may be located there should be an arrangement between the International Labour Organisation and the Government or international authority having jurisdiction over the seat which ensures that the Organisation will enjoy there the full independence necessary for the effective discharge of its international responsibilities until such time as the arrangement is terminated by mutual agreement.

33. Article 5 of the Constitution provides that 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. In order to permit future decisions in regard to the place of meeting of the Conference to be taken on the basis of current requirements, the Delegation recommends that this article should be amended to read "The meetings of the Conference shall, subject to any decisions which may have been taken by the Conference itself at a previous meeting, be held at such place as may be decided by the Governing Body". The Delegation considers that as a general rule sessions of the Conference should be held at places where the special facilities necessary for the efficient working of international conferences are available. But in view of the probability that such facilities will be available in the future at more than one international centre, the Delegation considers it appropriate that the provisions of the Constitution on the subject should be of a flexible character.

34. Various articles of the Constitution confer jurisdiction in certain circumstances upon the Permanent Court of International Justice. The Statute of the International Court of Justice, which has replaced the Permanent Court of International Justice, provides that "whenever a treaty or Convention in force provides for

reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matters shall, as between the parties to the present Statute, be referred to the International Court of Justice". The principle that the International Court of Justice will inherit the jurisdiction of the Permanent Court of International Justice has thus been accepted by the United Nations. But as the Statute of the International Court is binding only as between the parties thereto, it is desirable that the International Labour Organisation should include among the contemplated amendments to the Constitution provisions transferring to the International Court the jurisdiction entrusted to the Permanent Court by the Constitution of the Organisation. The Delegation accordingly recommends the substitution of references to the International Court of Justice for the references to the Permanent Court of International Justice contained in various articles of the Constitution.

35. The Delegation also recommends certain purely formal amendments which are similar in character to its proposals for the deletion from the Constitution of the references to the League of Nations. The Instrument of Amendment adopted by the Conference in Paris provided for the addition to the Preamble of the Constitution of the words "Constitution of the International Labour Organisation", the term which has now been in use for over ten years to describe the provisions which were originally known as "Part XIII of the Treaty of Versailles and the corresponding parts of the other Treaties of Peace". The expression "this Part of the present treaty" is used in a number of the later articles of the Constitution, and the Delegation recommends that it should be replaced wherever it occurs by the expression "this Constitution". It also recommends that the transitory provisions contained in Articles 38 to 40 of the Constitution, which deal with the arrangements for the 1919 Session of the International Labour Conference and certain arrangements applicable prior to the constitution of the League of Nations and creation of the Permanent Court of International Justice, should be formally abrogated.

36. As part of the organisation of the League of Nations, the International Labour Organisation has enjoyed, in addition to the somewhat indeterminate status and immunities accorded to public international organisations by customary international law, the status and immunities provided for in Article 7 of the Covenant, which formulates the principles that representatives of the Members of the League and officials of the League, when engaged on the business of the League, shall enjoy diplomatic privileges and immunities and that buildings and other property occupied by the

League and its officials shall be inviolable. The corresponding provisions of the Charter of the United Nations specify that "the organisation (*i.e.*, the general organisation created by the Charter) shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes"; that it "shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes"; that "representatives of the members of the United Nations and officials of the organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organisation"; and that "the General Assembly may make recommendations with a view to determining the details of the application" of these privileges and immunities "or may propose Conventions to the members of the United Nations for this purpose". A Convention made in pursuance of these provisions was approved by the General Assembly of the United Nations on 13 February 1946 and proposed by it for accession by each member of the United Nations. The report concerning these provisions adopted by the San Francisco Conference indicates that they relate only to the organisation itself and to its officials and not to other public international organisations which may be brought into relationship with it, and gives as the reason for this that the statutes or agreements under which these other organisations are set up presumably will contain the necessary provisions on the subject. Such provisions have indeed already been adopted by the conferences dealing with the Food and Agriculture Organisation, U.N.R.R.A., the International Monetary Fund, the International Bank for Reconstruction and Development, the International Civil Aviation Organisation, the European Central Inland Transport Organisation and the United Nations Educational, Scientific and Cultural Organisation. It thus becomes necessary for the International Labour Organisation to take action to have its position in the matter satisfactorily defined. The Delegation recommends that this be done by including in the Constitution of the Organisation provisions based upon those of the Charter of the United Nations as amplified by the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946 and proposed by it for accession by each member of the United Nations. The necessary provisions would take the form of two new articles of the Constitution which would be included as Articles 39 and 40 in substitution for two of the transitory articles which it is proposed to abrogate. Article 39 would provide that the International Labour Organisation shall possess

full juridical personality and in particular the capacity to contract, to acquire and dispose of immovable and movable property, and to institute legal proceedings. Article 40 would provide that "the International Labour Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes" and that "delegates to the Conference, members of the Governing Body, and the Director and officials of the Office shall likewise enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation". It would likewise provide that "Each Member for which the Convention on Privileges and Immunities approved by the General Assembly of the United Nations in pursuance of Article 105 of the Charter of the United Nations on 13 February 1946, or any revision thereof, is in force shall accord to the International Labour Organisation and its officials the privileges and immunities which are accorded by that Convention to the United Nations Organisation and comparable officials thereof". The General Assembly of the United Nations has adopted a resolution on the co-ordination of the privileges and immunities of the United Nations and the specialised agencies which is in the following terms:

The General Assembly considers that there are many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialised agencies.

While recognising that not all specialised agencies require all the privileges and immunities which may be needed by others, and that certain of these may, by reason of their particular functions, require privileges of a special nature which are not required by the United Nations itself, the General Assembly considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a maximum within which the various specialised agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for.

Therefore the General Assembly instructs the Secretary-General to open negotiations with a view to the reconsideration, in the light both of the General Convention adopted by the United Nations and of the considerations above, of the provisions under which the specialised agencies at present enjoy privileges and immunities.

The Delegation fully shares the view of the General Assembly that the largest possible measure of unification should be secured in the privileges and immunities enjoyed by the United Nations and the various specialised agencies, and it considers that the most convenient manner in which to achieve this result, so far as the International Labour Organisation is concerned, is for the Members of the Organisation to undertake to accord to the I.L.O. and

its officials the privileges and immunities accorded by the General Convention to the United Nations and comparable officials thereof. In these circumstances, it has been unnecessary for the Delegation to consider in detail the immunities which should be enjoyed by the I.L.O., since its functions are closely analogous to those of the Economic and Social Council and the Secretariat of the United Nations, and the immunities required for the fulfilment of these functions can therefore be appropriately defined by providing for the application to the I.L.O. of the régime agreed upon for these bodies. The Delegation has, however, thought it desirable to include among its proposals a clause providing that "the Organisation may conclude with any Member or Members agreements supplementing or amending in so far as the International Labour Organisation is concerned the provisions of any Recommendation or Convention adopted by the General Assembly of the United Nations in virtue of Article 105 of the Charter or defining the immunities of the Organisation and its officials in relation to Members for which no such Convention is in force". This clause would permit any Member of the Organisation to propose any variation of the provisions of the General Convention which it might think appropriate in respect of the International Labour Organisation and would authorise the Organisation to make appropriate arrangements with any State for which the General Convention was not in force. A similar provision permitting adjustments in the terms of the General Convention in the case of the United Nations Organisation is contained in that Convention.

37. The entry into force of the amendments outlined in the present chapter would complete the process of separating the International Labour Organisation from the League of Nations in so far as that process calls for constitutional amendments. Meanwhile the necessary action to disentangle the financial interests of the International Labour Organisation from those of the League is being taken in other ways, and the various problems which arise in this connection are expected to have been solved by the time of the 29th Session of the Conference (Montreal, September 1946).

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## CHAPTER IV

### AMENDMENTS TO THE CONSTITUTION OF THE I.L.O. DESIGNED TO FACILITATE CO-OPERATION WITH THE UNITED NATIONS

38. The third group of amendments recommended by the Delegation consists of amendments designed to facilitate co-operation between the International Labour Organisation and the United Nations. The desire of the I.L.O. to enter into relationship with the United Nations on appropriate terms has been authoritatively and unequivocally expressed in the resolution on the subject adopted at the Paris Session of the Conference. This resolution —

1. Welcomes the entry into force of the Charter of the United Nations and pledges the full co-operation of the International Labour Organisation with the United Nations in pursuance of the objectives set forth in the Charter of the United Nations, the Constitution of the International Labour Organisation and the Declaration of Philadelphia;

2. Expresses the keen satisfaction of the International Labour Organisation that the Charter provides that the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems, and international cultural and educational co-operation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and embodies a pledge by all members of the United Nations to take joint and separate action in co-operation with the United Nations for the achievement of these purposes;

3. Confirms the desire of the International Labour Organisation to enter into relationship with the United Nations on terms, to be determined by agreement, which will permit the International Labour Organisation, in which the representatives of workers and employers enjoy equal status with those of Governments, to co-operate fully for the attainment of these ends, while retaining the authority essential for the discharge of its responsibilities under the Constitution of the Organisation and the Declaration of Philadelphia; and

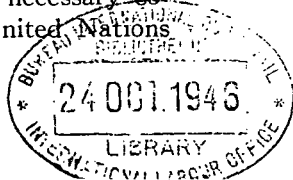
4. Authorises the Governing Body of the International Labour Office to enter, subject to the approval of the Conference, into such agreements with the appropriate authorities of the United Nations as may be necessary or desirable for this purpose.

This resolution has been officially communicated by the Acting Director of the International Labour Office to the President of the

General Assembly of the United Nations, and has been transmitted by the President of the General Assembly to the President of the Economic and Social Council. Responsibility for the necessary negotiations with the United Nations rests with a delegation appointed by the Governing Body, and accordingly lies outside the mandate of the Conference Delegation on Constitutional Questions, which is, however, to examine and report upon any proposals for the amendment of the Constitution which may arise out of such negotiations.

39. Two of the amendments already adopted at the Paris Session of the Conference deal with some of the principal problems which are likely to arise in connection with the relations between the United Nations and the I.L.O. The rules relating to the membership of the Organisation embodied in the amended text of Article 1 are designed to make clear the desire of the International Labour Organisation to achieve universality of membership and in particular its desire to secure the full participation in the Organisation of all States which are members of the United Nations. They provide that any member of the United Nations may become a Member of the International Labour Organisation by communicating to the Director of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation. The provisions concerning financial and budgetary arrangements embodied in the amended text of Article 13 are designed to facilitate the conclusion of appropriate financial and budgetary arrangements between the International Labour Organisation and the United Nations but they will also make it possible for the International Labour Organisation to finance itself autonomously if that should prove to be necessary or desirable.

40. The Delegation has given careful consideration to the question how far any further amendments to the Constitution may be desirable to facilitate co-operation with the United Nations. Its examination of the question has necessarily been of a preliminary character, since the anticipated negotiations have not yet taken place, but it has reached certain provisional conclusions on the basis of the provisions of the Charter and of the "Observations on Relationships with Specialised Agencies" submitted to the General Assembly by the Preparatory Commission of the United Nations and referred to the Economic and Social Council as a guide for its negotiations. The Delegation has concluded from its examination of the question that within the new framework of the United Nations it is desirable to provide for the necessary co-operation by means of agreements between the United Nations





and the International Labour Organisation rather than by the inclusion of provisions on the subject in the Constitution of the International Labour Organisation. There are a number of reasons for preferring this approach to the problem. The constitutional links between the International Labour Organisation and the League of Nations created in 1919 were forged before any practical experience had been acquired of the working of either the Organisation or the League; seen in retrospect, many of these links had little bearing upon the problem of securing co-ordination in respect of policies and activities between the two institutions, and such co-ordination as was thought desirable was secured primarily by methods not provided for in the Constitution. It follows that the policy of full co-operation with other international institutions does not necessarily imply the maintenance of equivalents for all of the links with the League of Nations provided for by the Constitution of the International Labour Organisation as at present in force. The plan for co-ordinating the activities of international organisations provided for in the Charter of the United Nations is essentially a scheme for co-ordinating the activities of bodies having wide international responsibilities as defined in their basic instruments. Furthermore, the Charter of the United Nations contemplates that its provisions may be reconsidered after an experimental period. Article 109 (3) of the Charter provides that if a general conference of the members of the United Nations for the purpose of reviewing its provisions has not been held before the 10th annual session of the General Assembly, the proposal to call such a conference shall be placed on the agenda of that session. This experimental character of the Charter is an additional reason for framing any further amendments to the Constitution of the International Labour Organisation which may be contemplated in terms sufficiently general and flexible to make it improbable that any alteration of the Charter will make necessary further amendment of the Constitution of the Organisation. When considering the formulation of possible amendments it must also be remembered that it was possible for the Constitution of the International Labour Organisation to place definite obligations upon the League of Nations because it was brought into force by the same instruments as the Covenant of the League. Amendments to the Constitution of the International Labour Organisation would not have the effect of placing obligations upon the United Nations unless the United Nations assented to the proposed arrangements. In the light of these various considerations it would seem preferable to frame such amendments to the Constitution of the International Labour Organisation as may be desirable in general language, since

the details of the relationship between the International Labour Organisation and the United Nations will have to be settled by mutual agreement in the manner contemplated by the Charter of the United Nations.

41. In the light of these considerations the Delegation recommends that the pledges of full co-operation with other international bodies which the Organisation has already given should be re-affirmed in the Constitution in an appropriate provision of a general character, and that in addition to the amendments relating to membership and finance adopted in Paris and the provision for the registration of international labour Conventions under the Charter of the United Nations already mentioned when discussing the amendments arising out of the dissolution of the League of Nations, two further minor amendments designed to facilitate such co-operation should be adopted, but that no rigid or detailed provisions in regard to the relations between the International Labour Organisation and other international bodies should be included in the Constitution at the present stage. The incorporation in the Constitution of the Declaration of Philadelphia will, of course, give the force of a constitutional provision to the pledge of co-operation contained in the Declaration, but the Delegation considers it desirable that the Constitution should also contain a provision that "the International Labour Organisation shall co-operate within the terms of this Constitution with any general international organisation entrusted with the co-ordination of the activities of public international organisations having specialised responsibilities and with public international organisations having specialised responsibilities in related fields." Similar provisions are contained in the F.A.O. Constitution and in the Fund and Bank agreements. The Delegation intends the term "public international organisations" to include only international organisations the membership of which consists of States or Governments, and understands that it has been used in that sense in a number of recent international instruments, including the Statute of the International Court of Justice, the F.A.O. Constitution and the Fund and Bank agreements. It discusses in a later chapter of the Report the relationship to the I.L.O. of non-governmental international organisations. The minor amendments recommended by the Delegation relate to reciprocal representation at meetings and to the proposal of items for inclusion in the agenda of the Conference. The United Nations "Observations on Relationships with Specialised Agencies"<sup>1</sup> emphasise that the reciprocal representation at meetings contemplated by Article 70 of the Charter of the

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<sup>1</sup>*Report of the Preparatory Commission of the United Nations*, 1945, pp. 40-48.

United Nations is one of the most effective means of securing close relationships between the specialised agencies and the United Nations and envisages the inclusion in agreements between the United Nations and specialised agencies of arrangements for the inclusion in the agenda of the conferences and executive bodies of the specialised agencies of items proposed by the Economic and Social Council. The Delegation fully concurs in regarding these matters as being of outstanding practical importance. It accordingly recommends the inclusion in the Constitution of the Organisation of a paragraph providing that "the International Labour Organisation may make appropriate arrangements for the representatives of public international organisations to participate without vote in its deliberations" and the amendment of Article 14 of the Constitution, which at present provides that the Governing Body shall consider any suggestion as to the agenda of the Conference that may be made by the Government of any of the Members or by any representative organisation of employers or workers recognised for the purpose of Article 3 of the Constitution, by the inclusion on the same footing of suggestions made "by any public international organisation".

42. The Delegation has considered the procedure to be followed if any further amendments should prove to be desirable when the anticipated negotiations with the United Nations have taken place. It was suggested that there might be included in the Constitution a provision permitting any subsequent modifications of the Constitution necessary to give effect to arrangements between the Organisation and the United Nations to become effective on approval by the Conference without ratification by the Members of the Organisation; but on the whole the Delegation took the view that it was undesirable to depart from the regular democratic procedure of ratification by the Members of the Organisation. It was pointed out that if the anticipated negotiations with the United Nations had been completed at the time of the adoption by the Conference of the amendments now contemplated the problem would not arise, since any further amendments which might arise out of the negotiations could be adopted simultaneously, and in these circumstances it was agreed that it is unnecessary for the Delegation to make any recommendation on the matter at the present stage.

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