General Principles of an International Convention on the Conditions and Contracts of Employment of Foreign Workers: III[1]

by

Louis VARLEZ

Professor in the University of Ghent;
Former Chief of the Migration Service, International Labour Office

THE CONTRACT OF EMPLOYMENT OF RECRUITED WORKERS

The recruiting discussed in the foregoing pages is a particular form of emigration for another country. But the immediate reason why the worker emigrates is the contract of employment offered him when he is recruited. Although in theory it is perhaps not impossible to separate the questions of recruiting from those of the contract offered to the recruited worker, it seems for practical reasons more useful to consider these two questions together.

Hence all the international bodies that have examined recruiting questions—the International Labour Conference, the Geneva International Emigration Commission, the Rome Emigration and Immigration Conference—have adopted this view, which is also followed in the bilateral conventions between States. Similarly, the Vienna Chamber of Workers and the Austrian Trade Union Commission have also recommended simultaneous examination.

The resolution of the Rome Conference already referred to is particularly interesting in this connection, for it clearly shows that it is to the common interest of countries of emigration and of immigration to keep these problems linked.

It should also be borne in mind that the question of the contracts offered to workers recruited abroad is not the same

[1] For Parts I and II of this article, cf. *International Labour Review*, Vol. XIX, No. 3, March 1929, and No. 4, April.

as that of the contracts under which foreign workers engaged within the country of immigration are employed. When the latter are engaged they are already under the *imperium* of a Government which is free to fix the conditions affecting public policy of the contracts of employment concluded in its territory; but when the contract is concluded as a condition of the departure of the worker, it forms part of the operation of recruiting. The only contract of employment to be considered here, therefore, is that concluded when workers are recruited in another country.

The Form of the Contract

Should the contract of employment of the recruited worker be subject to certain conditions of form, or may it, like the contracts of employment within a country, be concluded orally or in writing, expressly or tacitly, as the parties prefer?

Here it should be observed that, in point of fact, recruiting abroad is as a rule not authorised now unless the countries concerned have previously agreed on the text of the proposed contract of employment, and this implies a written contract.

This appears to have been the aim even at the time of the Washington International Labour Conference in 1919, when the Recommendation adopted stated that the recruiting of workers abroad should be permitted only "by mutual agreement" between the countries concerned. For the points to be covered by such an agreement must almost inevitably include the conditions of employment of the recruited workers and the establishment of equality of treatment, incidentally a subject dealt with in another Recommendation of the same Conference.

Previous agreement on the contract appears also to have been demanded by the Geneva International Emigration Commission of 1921, when it expressed the view that "wages should not be less than those paid in the country of immigration", and advocated certain regulations on wages and the deductions to be made from them.

The resolutions of the Rome Conference are even more precise. They demand that, for collective recruiting, the authorisation to recruit shall be granted only if the general conditions of the contract of employment are indicated in the

contract to be concluded between the employer and the workers, and state that these conditions should in principle be drawn up by agreement between the authorities of the countries of emigration and of immigration (III, 7 and 8).

All the bilateral treaties that contain clauses on recruiting also specify carefully the way in which the model contract of employment is to be applied, and give detailed explanations on this subject. Examples are the Franco-Polish, Franco-Czechoslovak, Germano-Polish, and Austro-Polish treaties, which imply the existence of a written contract.

The Austrian workers' organisations, on their side, lay special stress on the demand for a standard contract of employment. This system of a standard or model contract is very generally adopted for collective recruiting. In this case the agreed standard provisions are often reproduced in full in the actual contract, which is printed in several languages, with a wealth of detail sufficient to make up a large booklet (cf. the Franco-Czechoslovak, Franco-Polish, Germano-Polish, Austro-Czechoslovak, Austro-Polish, and Germano-Czechoslovak treaties).

In countries of emigration whose inhabitants do not belong to a white race, the Governments are also particularly careful to see that workers do not emigrate collectively without very detailed and thoroughly discussed contracts of employment, which shall ensure equitable conditions of employment for their citizens resident abroad, and must even be explained to the emigrants by impartial officials. Copies of this standard contract must be given to each person concerned, accompanied by the special regulations for each recruiting operation.

The Austrian proposal is definitely in favour of such a system and states that the standard contract should be concluded as an individual contract.

Most laws and treaties dealing with contract questions state expressly that the standard or individual contracts concluded must be accompanied by *a translation into the languages of the worker and of his employer,* so as to prevent all risk of misunderstanding.

It is obvious that the agreement as to the standard contract may be tacit as well as formal, and that if a Government raises no objection to a text submitted to it or proposed to its workers it thereby expresses its acquiescence.

The Place where the Contract is Concluded

We have already seen that the Emigration Commission of 1921 expressed the view that contracts concluded in connection with recruiting should be fully enforceable in the country where the worker is to be employed. This provision is generally accepted in European labour treaties.

Certain countries of emigration (such as Italy and India) consider it of special importance that the contract should be concluded at the time of recruiting, when the authorities are in a position to protect their nationals against employers who may prove too powerful when they are on their own soil. It must not however be forgotten that many countries regard these contracts with little favour, since they are made before the worker concerned has been able to acquire a sufficient knowledge of the conditions of work in the country to which he is going, and they have introduced legislation prohibiting more or less severely work done under a contract concluded abroad before the work is actually taken up.

Thus in the United States the Act of 26 February 1885 on contract labour declares utterly void and of no effect all contracts of employment by which an immigrant engages to perform labour or service that are concluded before the immigrant left for the United States ; moreover, by the Immigration Act of 1917, contract labourers are not allowed to immigrate to the United States, but exceptions are allowed in certain cases, such as skilled workers if labour of like kind cannot be found unemployed in the United States. Similar provisions are in force in various other countries, and it must be admitted that when contracts of employment are concluded *abroad* without the protection of the Government, they are as a rule unsatisfactory both to the countries of emigration (India, for instance) and to the countries of immigration (the United States, for instance), and both to national and to foreign workers.

To satisfy the adversaries of "contract labour", must it therefore be decided that the contract of employment shall not be concluded before the worker has arrived at his place of work?

It seems difficult to satisfy both sides, and in view of these differences of opinion it seems that the validity of contracts concluded abroad can be recognised in principle, when the

Governments are not definitely opposed to this, and subject to certain reservations intended to prevent abuses.

Nearly all the countries that have so far concluded labour treaties have in fact recognised the validity of contracts concluded abroad, and many of them have even made these compulsory. At the Rome Emigration and Immigration Conference in 1924, a resolution was adopted *nem. con.*, stating explicitly that contracts drawn up in the country of emigration between the employer and the workers should have full force in the country of immigration, provided that they are in conformity with the laws of the country of emigration and that they are not contrary to public policy or to the laws and regulations of the country of immigration.

With a reservation of this kind, there can hardly be any serious objection to the insertion in the International Convention of a clause concerning the validity of contracts concluded abroad. This is the attitude adopted, notably, in the Emigration and Labour Treaty of 8 October 1921 between Italy and Brazil, which, in spite of the distance separating these two countries, declares that individual or collective contracts of employment, concluded in Italy by Italian workers and to be carried out in Brazil, are fully enforceable in the latter country provided they are not contrary to public policy. The Brazilian Government even assumes a special obligation to have them carried out.

Due respect must however be explicitly maintained for any laws opposing the conclusion of these contracts abroad or imposing strict regulations in this matter. And it is to be noted that even in the United States, the country where the opposition to foreign contracts is strongest, the prohibition is not absolute, and there are cases in which contract labour is allowed.

The Drawing up of the Contract

It has been shown that both Governments and employers' and workers' organisations are as a rule in favour of the adoption of standard or model contracts of employment for recruited workers. But although there is agreement on the principle, there are many differences of opinion as to the form to be given to these contracts and the conditions in which they are to be drawn up.

The official international conferences seem to prefer arrangements concluded after consultation of the employers and workers in the industries concerned in the two countries. This was the view approved by the International Labour Conference in 1919 and the International Emigration Commission in 1921 for all cases of recruiting abroad. The Rome Emigration and Immigration Conference, in 1924, after declaring that the conditions of recruiting may be established after consulting the employers and workers of the industries concerned in the two countries (III, 7 (3), added that the general conditions of the contracts of employment should in principle be drawn up by agreement between the authorities of the two countries.

Turning to the existing bilateral treaties, it will be found that appended to the text of the Germano-Polish Treaty of 1927 is a contract of employment for foreign agricultural workers, which was drawn up by the German Professional Committee for Agriculture and Forestry *(Fachausschuss für Land- und Forstwirtschaft)* and then approved by the Polish Government. The Committee in question, which is attached to the German Federal Office for Employment Exchanges and Unemployment Insurance, is a joint body representing employers and workers, but all the members are German. Exceptions to the standard contract may be allowed by individual agreement, but only if the change is in the workers' interests.

The Franco-Czechoslovak and Franco-Polish Labour Treaties provide for the drawing up of model contracts by agreement between the competent administrative departments of France and Czechoslovakia or Poland, as the case may be. A copy of each contract of employment must be submitted for the approval of the two administrative departments, which must satisfy themselves that the conditions specified in the treaty are respected. It may be added that each of these treaties places the whole organisation of recruiting under the supervision of a mixed Franco-Czechoslovak or Franco-Polish Commission.

Under the Germano-Czechoslovak Treaty of 1924 the contract to be concluded is drawn up by the authorities concerned and is appended to the recruiting arrangement, of which it forms an integral part. Similarly, under the Austro-Czechoslovak Treaty of 1925 and the Austro-Polish Treaty of 1921, the model contract of employment is appended to the agreement, and is the work of the two administrative departments that have concluded the agreement.

Thus the drafting of the standard contract may be subject to two kinds of supervision, that of the trade associations, and that of the public administrative departments, and these forms of supervision are often exercised by mixed committees.

It seems difficult for an International Labour Convention to enter into much detail on all these points. It will no doubt be sufficient to state in it that the standard contracts should be duly examined and checked by the parties concerned, leaving the particular countries to settle questions of detail by bilateral arrangements that allow for their special conditions and needs. It must not be forgotten that these conditions and needs vary widely in different countries and that many principles that are generally accepted in Europe are not so in Asia or Africa ; it follows that an excess of detail on technical points would necessarily prevent ratifications. It would, for instance, be difficult to give a definition in international law of the " equal " representation of employers and workers that would meet the economic conditions of all countries.

The Conditions of Employment of the Foreign Worker

The Draft Convention will naturally state in general terms the conditions of employment of the foreign worker whose recruiting has been authorised. What provisions of this kind can be inserted in it ?

The Views of International Conferences

The resolutions of the international conferences as a rule contain very few recommendations on this point. The International Emigration Commission of 1921, for instance, merely recommended that the wages should not be less than those paid in the country of immigration, and condemned clauses involving deductions from wages that are contrary to the legislation of that country.

The Rome Conference of 1924 was rather more explicit. It demanded that the employer shall guarantee that wages and pay in general will not be lower than the normal wages and pay current in the district and the industry, and further, that there is no strike or lock-out in the undertaking ; it also recommended that the authorities of the country of emigration shall not require

higher wages to be paid to their nationals than to workers belonging to the country of immigration. It added that a contract concluded abroad should have full force, except as regards clauses contrary to public policy and the laws and regulations of the country of immigration, and should not give rise to any coercive measures in that country.

The Havana Conference tried to hold the balance between the demands of workers and employers by deciding (IV, 2) that :

> Equality of treatment between foreign workers lawfully resident in the territory of a country and national workers should be strictly observed in the administration of laws for the protection of labour and social insurance and in connection with the conditions of labour, and the principle of equality of wages should not be violated by workers' asking for a supplementary remuneration intended to cover the travelling expenses of which the repayment was not foreseen in the contracts or conventions in force.

The principle of equality of treatment was also recognised by the Sixth Pan-American Conference, held at Havana in 1928, which demanded " the equality of civil rights between nationals and aliens ".

The special conferences held separately by countries of emigration and of immigration have treated the questions of equality of treatment from somewhat divergent points of view. While the Conference of countries of emigration held in Rome in 1921 was definitely in favour of equality of treatment between national and foreign workers, that of countries of immigration held in Paris in 1923 made reservations on this subject, declaring that the questions raised by the full application of the principle of equality of treatment and the consequent advantages enjoyed by foreigners should be carefully examined, in particular as regards the various forms of social insurance, when these foreigners refuse to assume the corresponding obligations by declining to be naturalised.

The draft submitted by the Austrian workers contains proposals for including wage provisions in the contracts : wages should be equal to those of national workers and should include travelling expenses in both directions. The contracts should further provide for the medical and technical examination of the workers and the setting up of arbitration courts.

The Provisions of Bilateral Treaties

An examination of the bilateral labour and emigration treaties shows that they contain in the first place a large number of clauses on the general conditions of residence of immigrant workers, and general regulations or protective measures, which are outside the scope of the individual contract of employment. These clauses are either police regulations which are binding on all persons resident in the country, or they concern only the Governments and have therefore nothing to do with the contract of employment as such.

Thus the bilateral treaties deal with equality of treatment as regards charitable assistance, insurance, compensation for accidents, mutual aid, relief in the form of work, unemployment relief, the right of combination and freedom of association, co-operation, the acquisition of rural and urban property, admission to schools, legal protection, participation in committees for social purposes, hygiene and safety, rates and taxes, conditions of work, eligibility and the right to vote for industrial courts and commissions, and many other matters that have little to do with the contract as such.

On all these points it may be necessary to legislate, and it may even be useful to conclude special bilateral or multilateral treaties or to insert them in a Labour Code for foreigners ; but a Convention on the recruiting and contracts of foreign workers would lose its usefulness and efficacy if it were to be burdened by clauses of this kind.

In addition, the bilateral labour and emigration treaties contain a large number of clauses directly relating to the contract of employment of recruited workers. Those concerning the general conditions of employment, and above all wages, are in this respect of essential importance. The principle of equality of treatment between foreigners and nationals is fairly widely recognised. Analogous provisions deal with hours of work, rest periods, night work, and Sunday work. On all these points the bilateral treaties of all countries are agreed : it has become an almost universal practice in individual treaties to recognise equality of treatment within these limits.

But apart from this general declaration, the treaties contain many special provisions on individual contracts of employment

and the conditions of recruiting. Here a distinction must be made between European and American labour treaties on the one hand, and those in other parts of the world on the other.

The former contain several particulars regarding the period of validity of the contract, the age and sex of the recruited workers, the measures to be taken with respect to families separated by emigration, the place of work and the nature of the work to be done, compensation for accidents, the effects of sickness and invalidity on the contract, the conditions of transport on the outward journey and of repatriation at the end of the employment, the conditions of renewal of the contract, the conditions of entry into the country, the effect of industrial depression, deductions from wages, the methods of payment of wages, overtime, output bonuses, conditions of moral character, the right to belong to trade unions and associations, the conditions and effects of the cancellation of the treaties, etc.

On all these points the treaties contain declarations in general terms, it being left to the administrative departments and commissions or to the trade associations concerned to define them in greater detail in the individual contracts.

As a rule more detailed and far-reaching provisions are to be found in the many agreements by which non-European Governments authorise the engagement of their workers for employment abroad. This is to be expected, for a European worker who goes to work in another European country has some idea of the general conditions of his employment. He belongs to the same race as the national workers, can mix easily with them, and has no difficulty in adopting their ordinary conditions of life. The position is quite different for non-European workers, who are often less well educated, and before their departure and during their whole stay abroad have need of a contract stipulating very precisely the conditions of their employment and of their repatriation.

The object of these provisions is often less to establish formal equality, which is difficult to realise between workers with very different customs, than to guarantee equitable treatment to workers of other races, with due regard for their state of health, morals, and civilisation.

In mandated territories and colonies the regulations are often even stricter, and are of particular interest owing to the fact that they have been established in agreement with the international organisations. They comprise a whole system of prohibitions

and rules which have gradually superseded the old and now obsolete conditions of employment (indentured labour) [1].

Among particularly detailed provisions applicable to non-European workers are those relating to the period of the engagement, the conditions of the journey, maintenance and repatriation, health, board and lodging, the effects of the separation of families and the conditions of payment of compensation to those left behind, the assistance to be given by the employer in the absence of insurance against sickness, accident, or invalidity, the conditions of departure and return of girls and married women, the security to be given by the recruiter, and the compensation due in case of cancellation or non-execution of the contract, the liability of the recruiter, the employer, and possibly their Government, advances out of wages and the method of repayment, the prohibition of corporal punishment and imprisonment, the function of protective organisations, etc.

In a general way these arrangements aim at ensuring that the emigrants shall have a tolerable minimum of subsistence and an effective protection against employers who might easily abuse their local authority over workers of another race, whom they often consider as inferiors.

The Equality of Treatment Clause

It will be seen that all the systems adopted or recommended rest ultimately on one essential clause : that of equality of treatment between national and foreign workers. It must be clearly understood that it is equality and not identity of treatment that is here in question ; for it is sometimes a difference of procedure that will best assure real equality for the foreign worker.

This principle being generally accepted, it will be necessary to formulate it in a Draft Convention applicable to all countries. The question is not without certain difficulties, for, though equality of treatment between national and foreign workers may be a simple and attractive formula, clear-cut and definite when examined at a distance, some of its clarity of outline disappears when it is considered more closely.

[1] For a detailed summary of these numerous and varied laws and appended contracts, cf. the volumes published by the International Labour Office entitled *Migration Laws and Treaties* (Studies and Reports, Series O, No. 3), to which reference has already been made. Cf. also *Forced Labour : Report and Draft Questionnaire* ; International Labour Conference, Twelfth Session, Item III on the Agenda. Geneva, 1929.

In the first place, a point that is often forgotten, equality of treatment should not and cannot exist in all matters. There is in particular the whole field of personal rights, where the treatment of the foreigner often can and should be different from that of the national. Disparities of this kind are innumerable ; we may mention, for instance, the provisions concerning guardianship, majority, minority, and legal capacity in general. It is obviously out of the question that a minor should merely have to cross the frontier to become able to conclude contracts and escape from the paternal authority.

Which are the labour questions, therefore, for which equality should be affirmed ? In this respect, it should first be recalled that so far as concerns police regulations and provisions relating to public policy and morals, such an affirmation is useless, for the laws in question apply *ipso facto* to all persons resident in the country. This is true of protective legislation properly so called, such as laws on the minimum age of employment, hours of work, and conditions of health and safety. The contract cannot include any clause extending the scope of these laws or excepting therefrom. It is useless, for instance, for a convention to prohibit distraint upon wages when the national law does not authorise it. This is self-evident.

The agreement between employer and employed, between recruiter and recruited, must therefore stipulate equality of treatment only for cases in which it can take effect; for instance, for individual rates of wages, hours of work, day or night work, and many other matters, so far as these provisions are left by the law to the free discretion of the parties.

It might also be thought possible for the Convention to organise the application of the system of social insurance to which the foreign worker will be subject ; but here there are so many special and difficult questions of a national or technical character that it seems preferable to reserve these points for one or more special Conventions similar to those already concluded by the International Labour Conference. As a matter of fact, these questions relate, properly speaking, neither to recruiting nor to the contract of employment.

The Draft Convention ought, therefore, to contain a provision clearly affirming the right of foreign workers to equitable treatment and genuine equality in the conditions of employment and remuneration. The details of application would be left to bilateral arrangements, which will no doubt become more

numerous in consequence of the adoption of this general Convention.

In this way the application of these measures can be adapted at frequent intervals to the rapid changes that social and industrial developments entail in the conditions of employment of workers recruited abroad. Even now, various Governments have given up the system of long-term recruiting treaties, and adjust their arrangements year by year to the changes that have taken place. While these changes of detail are being made, the Convention itself, which merely lays down general principles, may remain unaltered with a fixity that would be disastrous if it were applied to details, and would soon turn to stone a piece of mechanism that must essentially be flexible if it is to be of use.

Other Clauses to be included in the Draft Convention

Nearly all the international conferences that have dealt with this question have recognised in principle that it is necessary that normal recruiting should be interrupted if a strike or lockout breaks out in the undertakings concerned. This point was discussed above in connection with recruiting itself, and the conclusion was reached that the Draft Convention might usefully have a clause providing in such cases for the interruption of official recruiting operations. A second affirmation of this principle in the contract itself would obviously be superfluous.

For the rest, we have already seen what a multitude of clauses are contained in the existing bilateral labour treaties and model contracts. It may be asked whether it is possible to follow this example in a multilateral Draft Convention. On mature reflection and after well weighing the arguments on both sides, the present writer does not think such a method either necessary or practicable. There is also the difficulty of choosing between so many proposals. Some particular provision, useful and even indispensable in one country, would be useless and perhaps pernicious in other countries, where it would meet with embittered resistance, the nature of which the foreigner would not even understand. Furthermore, contracts of employment and recruiting are undergoing such rapid evolution that it might be dangerous to lay down now in a Labour Convention certain formulae whose transitory nature would soon be apparent. Finally, if the general Convention is to have any chance of being adopted in present conditions, it must be brief, limited to essential

points, and must merely indicate general principles, leaving the necessary details of application to special bilateral arrangements or other Conventions. It would therefore seem sufficient to insert in the draft a general provision stating that model or standard contracts should stipulate equitable conditions of employment and equality of treatment in respect of wages and hours of work, all special questions being referred to administrative agreements and the individual contracts.

Particulars of these details of application and of the special conditions appertaining to each recruiting operation will moreover be given in the standard contracts ; reference to these will show in each case whether the proposed conditions of employment may be considered "equitable" in view of the circumstances, and whether they really ensure equality of treatment.

But although it seems difficult for the Convention itself to formulate very detailed regulations on this subject, the question nevertheless remains open, and there is obviously nothing to prevent the contemplated Draft Convention from containing certain special provisions on which agreement could be reached. This is the reason for the above enumeration of the principal questions forming the subject of Government demands, the provisions of labour treaties, and the resulting individual contracts.

The Function of Standard Contracts

In the preceding pages reference has frequently been made to standard or model contracts of employment, which are intended to fix in detail the rights and obligations of the contracting parties. It is these standard contracts that, after negotiation between the Governments concerned, will contain all the particular clauses considered necessary by the latter in connection with recruiting. It is therefore important to know what is meant by the "standard contract", for this term often gives rise to misunderstanding.

The provisions of the Convention concerning the standard contract may be conceived in two essentially different forms.

In the first place, they may constitute a mere framework on which all the clauses of the contract will be arranged according to a definite plan, while the Convention itself will contain no specific obligations. To follow the practice of many former

Austrian laws, an idea that appears at first to have attracted the authors of the Austrian proposal, the model might be conceived as a "skeleton contract" *(Rahmenvertrag)*. In this case, the Convention would indicate the various points on which the standard contract would have to furnish details and which it would have to follow article by article. The provisions of the standard contract would thus be at once imperative and optional : imperative because of the obligation to regulate the points indicated ; optional as to the nature of the provisions. This system has the advantage of drawing the attention of the parties to the various points enumerated in the Convention. It promotes agreement by neither rejecting *a priori* nor even recommending any special system. But the extreme freedom thus left to the parties considerably reduces and even stultifies the effect to be expected of a Convention on the standard contract, by the very fact that no attempt is made to include in it any fundamental provisions.

The result is that in practice this system is not widely used. The last proposal submitted by the Vienna Chamber of Workers and Employees appears to have given up so loose a system and asks that at least certain provisions should be compulsorily inserted in the standard contract.

This brings us to the second system : the obligation to include in the standard contract itself certain compulsory provisions which the parties cannot repudiate. This is in fact the usual interpretation given to the formulation of the standard contract.

But this obligation in turn may be carried out in many ways. It is possible, in the first place, to have a text with a fairly vague minimum programme, the same for all times, all conditions, and all countries, which would merely formulate in general terms certain principles of universal application, opposition to which is hardly conceivable. Understood in this way, the model contract, simple and formulated without great precision, might be appended to the International Convention itself, and perhaps adopted *ne varietur* by the International Labour Conference. But it is clear that so general a text would be only a formula. And since the Labour Convention itself may quite well include among its articles the essential principles it wishes to have recognised, the practical value of a supplementary formula of this kind is open to question.

Two other methods appear to offer more effective results.

The first, which is employed in many existing treaties, consists in drawing up one or more standard contracts, either together with the bilateral labour treaty or when it is carried into effect, nearly always with a provision for periodical renewal; these contracts contain the usual clauses which are to be applied in all individual contracts for certain industries, agriculture or mining, for instance, or even for all the workers of the country. They may be very comprehensive (that for agriculture between Austria and Czechoslovakia consists of over a hundred columns of small print), and they remain in force until replaced by new texts. This system appears to be the most convenient for the competent administrative authorities, which automatically apply the formula to all contracts; the parties, for their part, have full leisure to study the texts before concluding a contract. Such a method ensures a certain uniformity and stability, the effects of which are much appreciated by the persons concerned. It appears particularly appropriate for the relations between distant countries with different languages and systems of legislation (cf. the agreement between Brazil (Sao Paulo) and Poland concerning agricultural workers).

Another and more flexible system, perhaps more in harmony with the essence of the individual contract of employment, consists in leaving it to the parties to determine for each contract the actual conditions of employment and to refer to the general clauses of the accepted standard contracts only when they so desire, the essential provisions or exceptions being dealt with in the written contract. This system has the definite advantage of being much more adaptable to circumstances, although it has certain defects which make it more onerous to apply in practice.

With this method, the " contract " is the predominating idea, whereas with the preceding method it is the " standard ". Between the two systems a large number of intermediate methods can also be conceived.

It would seem difficult for the general Labour Convention under consideration here to enter into the details of these various systems, each of which has its advantages, or to try to impose any one of them throughout the world in spite of differences in administration and customs. It therefore seems preferable to leave the detailed drafting of the standard contracts to the decision of the persons directly concerned, who will adopt what they consider most suitable to their country, their industry, and their time.

But whatever the system finally adopted by two countries, it seems possible to state in the general Convention that the standard contract shall be subject to the same conditions as the individual contract, that it must be the subject of discussion between the parties before coming into force, that a copy is to be given to each contracting party, and that this copy is to be drawn up in a language understood by the person concerned.

A provision of this kind could hardly raise serious objections, for it is to be found, in more or less identical terms, in all the laws in force and in all the treaties concluded, both in Europe and in other continents ; and nearly all the resolutions of the official conferences demand it.

As regards the particular provisions to be inserted in the standard contract, in addition to the general principles formulated above, they will be drawn up by the Governments concerned after the necessary consultations.

In order to ensure a certain uniformity in the texts of the various contracts, however, the Conference which decides upon the text of the Draft Convention might conceivably also adopt a Recommendation to the Governments specifying the conditions of employment of foreigners that at the present time the Governments of civilised countries consider equitable and likely to ensure good relations between classes and between nations.

Conclusion

An attempt has been made here to give an impartial analysis of the large quantity of post-war documentation on the regulation and organisation of the migration of wage-earners which has expanded so greatly in recent years.

The old system of individual migration, undertaken primarily with a view to oversea settlement, has in fact been very largely superseded by that of the collective recruiting of workers for neighbouring countries.

The new phenomenon called for new regulations. Hence many countries have enacted laws for the protection of national interests and concluded bilateral treaties organising and regulating the particular relations between two States. But it had soon to be recognised that neither of these two forms of regulation could cover the whole of a very complex and essentially international phenomenon.

In their wish to achieve a more rational organisation of the recruiting and migration of labour, the Governments have already held several international meetings : at Geneva, notably in 1921, at Rome in 1924, at Havana in 1928. Recommendations, so far somewhat theoretical, have been adopted by the International Labour Conference. Congresses of employers and workers, too, have more than once examined the question. Thus useful work has been done to prepare the ground for the compilation of a Convention on the conditions of employment of workers recruited in foreign countries.

At the same time it must be realised that there are considerable differences between the contents of a national law, or even a bilateral treaty, and the essential provisions of a world-wide Convention. While the former may be content to contemplate the conditions and interests of one or of two countries, the Labour Convention must take account of the general interests and the infinite variety of conditions throughout the world, of the interests of countries of emigration and of immigration, of agriculture and industry, of workers and employers, and of the widely differing conditions of life, education, and employment of workers in all parts of the world. It follows, therefore, that while formulating universal measures, capable of bearing fruit in practice, it must leave out anything applying especially to any one region, country, group of workers, or race.

Now up to the present attempts have but rarely been made to distinguish between what is properly dealt with in a national law, a bilateral treaty, and a world-wide Convention ; this differentiation, however, is an indispensable preliminary to the drafting of a general scheme of regulations that can be adopted by the Governments in the form of an International Labour Convention, and that may subsequently have a serious chance of obtaining a sufficient number of ratifications.

It is to prepare the way for the drafting of a Convention of this kind that the present study has been undertaken, based, wherever possible, on the wishes already expressed by the Governments. It lays no great claim to originality. But although its ideas are those of others, it throws some light on certain rather difficult social and political problems, and it makes a first attempt to co-ordinate the various scattered suggestions in a single proposal.

In order to test the practicability of this proposal, a sincere appeal is made to the good will and competent knowledge of

experts in the different countries and in different quarters, in the hope that they will collaborate in this attempt by stating what, in their opinion, are the indispensable conditions for carrying out a work of international social legislation on which depends the betterment of the condition of the workers in so many countries, and which has already been demanded in principle by a number of Governments.