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# Some Legal Questions relating to International Labour Conventions[1]



by

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*While the broad outlines of the methods of working of the International Labour Organisation are fixed in Part XIII of the Treaty of Versailles, in practice numerous problems continue to present themselves for solution, some of internal interest, others of more general importance. The body responsible for studying the details of the procedure of the Governing Body and the Conference and adapting them to the successive results of experience is the Standing Orders Committee. This Committee was recently called on to define the procedure for the revision of Conventions, and in doing so it found it necessary to consider certain legal problems which are of considerable importance for the future activity of the Organisation.*

*In the following article, Professor Mahaim, who has for many years been Chairman of the Standing Orders Committee, and has therefore a thorough knowledge of its proceedings, studies some legal questions connected with International Labour Conventions. Some of these questions concern the legal nature of the Conventions themselves, others the "standard Articles" relating to denunciation and revision. In view of the discussions to which they have recently given rise, these questions are of special interest at the present moment.*

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[1] *Author's Note.* A short time ago I undertook to examine the legal questions discussed in the International Labour Organisation for the *Revue de droit international et de législation comparée*, the organ of the Institute of International Law, so ably edited by my friend and colleague, Professor Charles de Visscher of Ghent. As the subject is also likely to interest readers of the *International Labour Review*, many of whom were present at these discussions, the principal points of this study are reproduced here by the kind permission of the editor of the above periodical, to whom I wish to express my cordial thanks for this courtesy. *E. M.*

THE International Labour Organisation, like the League of Nations, presents certain special features from the legal standpoint. There can be no question that the recent formation of closer social links between States than existed before the war has modified conceptions and ideas in the field of international law.

A case in point is the discussions that have taken place during the last two years in the Governing Body of the International Labour Office and the International Labour Conference, which have shown that jurists sometimes hold divergent opinions. The purpose of the following pages is to give some idea of the interest of these discussions, which are not merely of theoretical importance, but may also have practical consequences.

## The Legal Nature of International Labour Conventions

### *The Draft Conventions adopted by the Conference*

More than one author has pondered over the legal nature of the acts adopted by the Labour Conference under the name of Draft Conventions. From the point of view of form, in particular, these acts are not identical with those usually concluded by States. International conventions and treaties are ordinarily negotiated by plenipotentiaries. The Labour Conference is not a meeting of plenipotentiaries. When the latter reach an agreement—and to the extent of that agreement—they sign a diplomatic act. Here, there is no signature. Afterwards the act in question must be ratified by the Head of the State from whom the plenipotentiaries derive their mandate. Here, the term ratification is given to a somewhat different formality, and the States Members are formally bound—even those whose delegates voted against it—to submit the act adopted by the Conference to their legislative authorities.

These differences have given rise to divergent opinions on the nature of the act adopted by the Conference. Dr. Oersted, Danish Employers' Delegate, who as a jurist has always taken an interest in the legal questions of the Organisation, has maintained that what the Conference adopts are "neither Drafts nor Conventions".

The first point to consider is whether the term "Draft" is inaccurate.

The minutes of the proceedings of the Commission on International Labour Legislation of the Peace Conference of Paris

(1919) show that the term was not in use at the beginning of the Commission's work. The original draft put forward by the British Delegation, which served as a basis for discussion from the second sitting on 4 February 1929 onwards, speaks always of "Conventions".

It was not until the morning sitting of 17 March 1919, when Mr. Robinson, second United States Delegate, submitted the American counterdraft, that the expression "Draft Convention" appeared. His Article XX, replacing Article XIX, runs:

> The Conference may at any time by a two-thirds vote of its members cause any proposal it has adopted and recommended to be embodied in a Draft Convention.... If any one or more of the High Contracting Parties shall sign and ratify a Convention which has been communicated as a Draft Convention approved by the Conference, the same shall be deposited....

This American counterdraft was submitted by the United States Delegation as an attempt to make the proposed system harmonise with the Federal Constitution. The aim clearly was to diminish and weaken the obligations assumed at the Conference. The latter was to vote only a text, which would remain in the state of a draft as long as it was not signed (*sic*) and ratified by the contracting parties.

When, finally, at the morning sitting of 19 March Sir Malcolm Delevingne presented the report of the Sub-Committee appointed to find a compromise, which had drafted a new text acceptable to the Americans, he naturally adopted the formula of the American counterdraft and, in the article that became Article 405, he used the term "Draft Convention". This term was maintained in the draft submitted by the Commission to the Preliminary Peace Conference.

Is the expression inaccurate? I do not think so, and I would even go so far as to agree with my distinguished colleague, Mr. Perassi, that it seems more accurate than the term generally employed. The Draft Convention of the Labour Conference is, in fact, nothing but a signed or initialled treaty awaiting ratification. Signature is replaced by the two-thirds majority vote of the Conference, as has already been observed by Mr. van Eysinga, in an interesting article in the *Revue de droit international et de législation comparée*.[1]

Now, as long as an international convention is not ratified,

[1] Series 3, Vol. I (1920), p. 127 : "Le droit de la Société des Nations et les constitutions nationales."

even though it may be a text *ne varietur*, it may legitimately be called a draft. In international law to-day, the ratification of a treaty signed by plenipotentiaries (even within the limits of their powers) is necessary to make it definitive or, as one might say, to give it legal existence. Admittedly, the current usage is to apply the term "convention" to a convention that has been merely signed and not ratified. But is it not this current expression that is inaccurate? How many of these conventions have remained in the state of drafts and have never had any real existence? It seems, therefore, that, to be strictly accurate, the term "draft conventions" should be used for the so-called conventions until they have received the ratification that gives them life.

It may also be noted that the text of Part XIII of the Treaty calls the act adopted by the Conference a "Draft Convention" only so long as it is not ratified. Thus Article 405, paragraph 7, and Articles 406, 408, 409, 411, and 421 speak of "Conventions" as soon as it is a question of ratified acts.

Many writers [1] have already observed that the procedure instituted by Part XIII is an innovation only in so far as it replaces the signature of plenipotentiaries by a vote of an assembly. The League of Nations has not adopted this procedure for itself. The protocols that are the outcome of the decisions taken by the Assembly are signed; but in the system adopted for the International Labour Organisation it was certainly by intention that the formality of signature was dropped. The main idea of the members of the Commission at Paris was to do without diplomats, or, more exactly, Foreign Ministers. They had before their eyes the experience of the Berne Conventions, which required two years for their conclusion and, at the second session, the intervention of the accredited Ministers at Berne. This was considered useless and over-long. Furthermore, the composition of the Labour Conference, which was to combine representatives of employers and workers with Government representatives, giving each an individual vote and placing all on an equal footing, was no longer consonant with the formality of signature by plenipotentiaries. Hence the peculiarity that the Geneva Labour Conventions are not dated like a diplomatic act.

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[1] Cf. VAN EYSINGA : *loc. cit.*, p. 147 ; J. BASDEVANT : "La conclusion et la rédaction des traités et des instruments diplomatiques autres que les traités", in *Recueil des cours de l'Académie de La Haye*, 1926, Vol. V, p. 597 ; A. RAPISARDI-MIRABELLI : "Théorie générale des unions internationales", in *Recueil des cours de l'Académie de La Haye*, 1925, Vol. II, p. 371.

By analogy with ordinary conventions, they ought to be given the date of the two-thirds majority vote of the International Labour Conference. At that moment, it is true, there is only a "Draft" Convention; but the position is precisely the same when a convention that has to be ratified is given the date of its signature, for at that date it, too, is only a draft. It may therefore be maintained that the term "Draft Conventions" is perfectly appropriate to the acts adopted by the Conference.

### *The Conventions : Their Contractual Character*

The next question is whether these acts really become true Conventions. This has been denied by some, who say, "They are not Conventions; they are laws." Some would like to add, "conditional laws".

This point of view has been defended with consummate skill in the Governing Body of the International Labour Office, and subsequently at the Twelfth Session of the Conference, by Dr. Oersted and Mr. Olivetti, the distinguished Danish and Italian Employers' Delegates. It is an interesting fact that the whole Employers' Group adopted this point of view, while pointing out that it had no political implications. At all events, this is a further striking demonstration of that group discipline which is becoming more and more marked at the Conference and so often gives it the air of a parliament.

Undoubtedly, the arguments used have nothing to identify them with employers in particular; they belong to the highest flights of pure theory. But it is impossible not to believe that the thesis may have a political interest for the Group that defends it unanimously, in view of the occasion on which it was put forward for the first time. The question was that of the possible revision of Conventions, and in particular of the Washington Convention on hours of work. As this revision had been proposed by the British Conservative Government, and as it was conceivable that the Convention might be amended on restrictive lines, the Employers' Group supported any proposal for extending the powers of the Conference in the matter of revision, while the Workers' Group upheld anything that might limit them.[1] It was during these discussions that the spokesmen of the

[1] It is quite possible to imagine that in certain circumstances the interests of the two Groups would be exactly reversed.

Employers' Group claimed that the Conference had the right to abrogate ratified Conventions, just as a parliament has the right to repeal the laws it has passed.

In support of the contention that Labour Conventions are laws, reference is naturally made to the theoretical distinction not current [1] between contractual treaties and legislative treaties.

If I am not mistaken, it is H. Triepel who is responsible for having developed a whole theory on the basis of this distinction, originally made by Bergbohm.[2] A contractual treaty, particularly when it is bilateral, expresses the agreement of two States, "whose interests differ but correspond, to make a declaration of their intentions, which, while aiming at the same external end, differ in content for the two." [3] Thus, for a cession of territory, one State declares that it resigns its sovereignty over the territory in question, the other declares that it acquires this sovereignty—i.e. contrary intentions—and the result, or external end, is the change of sovereignty in the territory. Similarly, a debtor State and a creditor State have different interests and opposite intentions, which lead to a single external result, the payment of the sum due.

In this theory, it is maintained that in a contract there is in actual fact no common intention of the parties; there are complementary intentions, resulting in a common end. In certain treaties, on the contrary, a true common intention is established. This happens when it is agreed to adopt a rule of conduct, a standard to which the parties propose to give legal force—a standard that may very well be called a law, since the act in question is one laying down rules. The word used in German to designate these treaties is *Vereinbarung* [4], as opposed to *Vertrag*

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[1] Cf. V. DUGUIT: *Traité de droit constitutionnel*, 2nd edition, 1921, Vol. I, pp. 275 *et seq.*; Marc RÉGLADE: "De la nature juridique des traités internationaux et du sens de la distinction des traités-lois et des traités-contrats", in *Revue du droit public*, 1924, p. 519; R. DEMOGUE: *L'unification du droit privé* (Paris, 1927), p. 150; BASDEVANT; *op. cit., passim;* etc.

[2] BERGBOHM'S work, *Staatsverträge und Gesetze als Quelle des Völkerrechts*, was published in 1877, TRIEPEL'S *Völkerrecht und Landesrecht* in 1899. The French translation of the latter by Mr. René BRUNET appeared in 1920 in the *Bibliothèque française de droit des gens de la Fondation Carnegie* (edited by A. de LAPRADELLE) under the title: *Droit international et droit interne.*

[3] TRIEPEL: *op. cit.*, p. 44 of French translation.

[4] Many French writers retain the German word, but it is open to several interpretations. Properly speaking, it means "agreement" (*accord*), but it is often translated by *union*, which may lead to confusion. Thus the latter word is not used in the same sense by H. KELSEN, in his lectures at the Hague Academy on "Rapports du système entre le droit international et le droit interne" (*Recueil des cours*, 1926, Vol. IV) and by RÉGLADE: *loc. cit.*, pp. 517 and 537, or DUGUIT: *Droit constitutionnel*, 2nd edition, 1921, Vol. I, p. 275.

(contract). It should be observed that in Triepel's theory the word *Vereinbarung* is applied to many things besides treaties. But it is certainly in the original sense of this distinction that Dr. Oersted and Mr. Olivetti presented their fundamental argument.

Mr. Olivetti said, in his Note to the Governing Body [1] :

> The Conventions of the International Labour Organisation are not contracts (*Verträge*) in the juridical sense of the term. They entail no reciprocal or commutative obligations, they do not contemplate the exchange of considerations which is the *causa negotii* of contracts. Draft Conventions are mere understandings (*accords—Vereinbarungen*) for the adjustment of certain general problems affecting labour ; their object is not to create reciprocal obligations, but to establish a common *norma agendi.*

Similarly, Dr. Oersted said [2] :

> The document is not a Convention. A Convention is a contract between two or more parties : a "Draft Convention" is not. It imposes no obligation on a State Member with respect to other Members.

Here I propose to pause a moment to note my agreement with this view, and to make a reservation. I can see no objection to recognising that what is voted by the Conference may be called a "law"; and I have adopted and continue to use the term "international labour legislation" to designate the whole body of conventions in force.[3] It is certainly the function of the International Labour Organisation to establish a common system of law, standards of conduct, applying to all the States Members. Their common intention is undeniable. But though the Conventions are laws, they are not binding; they need the consent, the acceptance of ratification. When it is said that they are "conditional" laws, it must not be forgotten that the condition is the express consent of the Member, a fact which confers on these laws a character of their own.[4]

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[1] Reproduced in the *Provisional Record* of the International Labour Conference, Twelfth Session, No. 2, 30 May 1929, p. LI.

[2] *Ibid.*, p. XLVII.

[3] G. SCELLE, in "Le problème de la Société des Nations" (*L'année politique*, Nov. 1928, p. 407), also has the same term, and uses it side by side with the term "pre-legislation", subsequently adopted by Mr. J. MORELLET in his article on the International Labour Office in the *Répertoire* of LAPRADELLE and NIBOYET.

[4] A law so described as conditional may be compared with the provision in social insurance laws that certain groups of persons may benefit by insurance without being compulsorily liable to it ; e.g. employees earning more than the specified maximum salary. But the situation is not the same. In this case there is a genuine law, binding on certain groups of citizens, and such that its existence does not depend on the consent of all those to whom it applies.

My reservation is twofold. In the first place, it is not correct to say that all Labour Conventions are *Vereinbarungen*. Some of them are true contracts (*Verträge*) under which there is an exchange of considerations.

Mr. Perassi very justly pointed out in the Standing Orders Committee of the Conference that this is the case for the 1925 Convention concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents, Article 1 of which runs :

> Each Member of the International Labour Organisation which ratifies this Convention undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

These are clearly reciprocal obligations, and the exchange of considerations is the *causa negotii*.

Then there are Labour Conventions, the parties to which, i.e. the States ratifying, take into consideration the personality of other parties. These are Conventions to which certain Members adhere only on condition that others do so too : Conventions subject to conditional ratifications. France, for instance, has ratified the Washington Convention on hours of work only on condition that Germany and Great Britain also ratify it. What does this mean but that it is to the interest of France that the model regulations, the Washington law, should be ratified (i.e. accepted), not by any Member of the Organisation whatever, but by Great Britain and Germany? France does not wish to assume the obligations unless her two principal rivals do the same. These obligations are the *causa negotii*. In this case, it might be said that the act is a complex one, with some of the features of a law, and some of a contract. The Preamble to Part XIII, moreover, states the special interest to each State of the adoption of an international labour law. "Whereas", it says, "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. . . ." This is a general principle of international solidarity, which shows that each State has an interest in the performance of the rest, individually as well as collectively. It is also characteristic of international labour legislation and of the Organisation that enacts it.

But the point is of slight importance. Whether the Geneva

Conventions are contractual treaties or legislative treaties, their contractual nature is no less certain, and that is the first essential. The distinction between contractual and legislative treaties is derived from a classification of treaties according to content, not nature. The word "law" suggests a legal standard that is imposed either from outside or in virtue of its own intrinsic qualities. But the expression used by Mr. Basdevant is more exact and does not entail the same misunderstanding. He often calls the *Vereinbarung* "a collective treaty formulating rules of law".[1] It is becoming more usual to-day because there is an increasing tendency for States to form international unions, in which treaties of this kind, binding only for the members of the union, are constantly involved.

But this must not be allowed to mislead. The treaties are always treaties, that is to say, acts involving what is usually called a concurrence of intention *(accord de volontés)*. As Mr. Rapisardi-Mirabelli so excellently puts it[2]:

> Generally speaking, there are no collective or international bodies whose activities may be described as legislative. The treaty is the normal and eminently predominant procedure in the formation of international law; and treaties are concluded through bodies belonging to the various States. The creation of the League of Nations has changed nothing in this respect. As to the provisions concerning the General Labour Conference (Article 405 of the Treaty of Versailles and the corresponding Articles of the other Peace Treaties), according to which the Conference may adopt Draft Conventions (by a two-thirds majority of the delegates present), these constitute innovations only so far as the ordinary conference of plenipotentiaries is replaced by a special body for the formulation of Draft Conventions. Besides, it is the separate States which conclude the treaty, by means of ratifications, which they are always free to refuse.

### *The Legislative Authority of the International Labour Organisation*

I wish to stress these essential points because it is sufficient to lose sight of them to regard the power of making legislative treaties as legislative power properly so called. In this case the real point to establish is the powers given by its Constitution, Part XIII of the Treaty, to that international union, the International Labour Organisation.

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[1] *Op. cit.*, p. 600 and *passim*.
[2] *Op. cit.*, p. 371.

If anything is certain, it is that the International Commission on Labour Legislation at Paris would not and could not give it legislative power in the proper sense of the term.

The Italian Delegation had put forward a proposal that Conventions adopted by two-thirds of the Delegates to the Conference should be given statutory effect after the lapse of one year, the Governments to have the right of appeal to the "Tribunal" of the Council of the League of Nations.

In view of the opposition of many delegations, this proposal was withdrawn. A French proposal, subsequently put forward, was ultimately given the form of a simple resolution, which is inserted in the Treaty of Versailles at the end of Part XIII :

> The Commission expresses the hope that as soon as may be possible an agreement may be arrived at between the High Contracting Parties, with a view to endowing the International Labour Conference under the auspices of the League of Nations with power to take, under conditions to be determined, resolutions possessing the force of international law.

This resolution was passed by eight votes to five and one abstention, that of Mr. Barnes.[1]

At the plenary sitting of the Peace Conference on 11 April 1919, Mr. Vandervelde commented as follows on this resolution in terms that clearly indicated the intentions of the Commission [2] :

> Another objection has been made to the Draft Resolution of the Commission, for the Italian Delegates considered that the powers given to the future Labour Legislation Conferences were insufficient. In point of fact, these Conferences will be, in spite of everything, Conferences of Plenipotentiaries. They will not be able to vote for anything except Recommendations or Conventions which must necessarily be submitted for ratification to the different Legislatures. Many, indeed, would have wished the creation of a Super-Parliament, the decisions of which would have bound the Parliaments and Governments of the various States represented.
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> I do not hesitate to say that I regard the creation of such an International Super-Parliament as an ideal towards which we should strive. I hope that one day the League of Nations may be sufficiently developed to be able to dictate laws to the world. Politics, however, are the science of what is possible, and it is precisely because I expect great things from the International Labour Conference that I have been among those who do not wish to demand from the Peace Conference the national abdications to which the nations themselves would not have consented. We must deal tenderly with the sovereignties

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[1] Cf. *Official Bulletin* of the International Labour Office, Vol. I, pp. 46-47, 51-52, 54-57, 93.

[2] *Ibid.*, p. 296.

which are beginning to draw closer to each other, and one day will federate, and it is in order to spare them that I have accepted the present text.

After this, it should be clear that those who took part in the drawing up of Part XIII and who heard and approved these words refuse to admit that the Conference has legislative powers, that it has the right to make laws, or at least laws binding on the States Members.

### *The International Labour Organisation and the Conventions ratified by Members*

But those who contest the "contractual" character of Labour Conventions do not go so far as to claim the fullest powers for the Conference. What they contend is that the text of Part XIII contains proof that, in fact, the contracting States have given the Labour Organisation, with the power of making legislative treaties, that of abrogating them.

The essential point of this proof is that the Draft Conventions create obligations for the Members, not towards each other, but towards the International Labour Organisation. The consequence of this would be that the Organisation could free Members from their obligations towards it, as, for instance, by abrogating a Convention ratified by several Members.

Dr. Oersted, in his Observations submitted to the Standing Orders Committee, wrote as follows [1] :

> The obligation to submit the Draft Conventions to the competent authority is an obligation with respect to the Organisation. No sanction is provided for a State which fails to fulfil the obligation. Provision is not even made for complaints being made on the subject. But neither is the "Draft Convention" a contract between the Organisation and its Members, since the same obligations are imposed on Members which voted for the Convention at the Conference as on the Members which voted against it. Those obligations are incumbent on States Members in virtue of the Peace Treaty itself, which is a real Convention ; but the obligations referred to in Article 405 take effect only from the moment of the adoption of a "Draft Convention". I recognise that it is difficult to find an appropriate term for these documents, but I should prefer to call them "conditional international laws", that is to say, they are international laws which may be accepted or rejected by the competent authorities of the States Members but not in any way changed by them.

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[1] Cf. *Provisional Record* of the International Labour Conference, Twelfth Session, No. 2, 30 May 1929, pp. XLVII-XLIX.

Reference might here be made to Article 407 and it may be concluded *a contrario* that only individual Conventions are Conventions between States.

As regards the reciprocity of the obligations arising from the ratification of these "international laws", such reciprocity does not in my opinion exist. The States Members which ratify a "Draft Convention" undertake to apply it, but this is an undertaking with respect to the Organisation and not with respect to the other Members. This can be easily proved. If the undertaking were a reciprocal one it is evident that only a State Member which has ratified a Convention could lodge a complaint "if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified" (Article 411). But Article 411 also provides that "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." The Treaty of Peace thus empowers the Governing Body of its own motion to adopt the procedure of enquiry, which may lead to the adoption of economic sanctions against a State Member which fails to fulfil the obligations resulting from the ratification of a Convention. It cannot therefore be denied that these obligations have not the legal character of reciprocity. Even the right of lodging complaints, which is conferred by the Treaty on Members which have ratified a Convention, does not correspond to the right which a contracting party ordinarily possesses when he concludes a reciprocal contract. It is not an absolute right. The Member can only lodge a complaint with the International Labour Office; it is for the Governing Body to decide whether or not action is to be taken on the complaint. Only in the event of the Governing Body deciding to take action and if the Member involved states that it does not accept the conclusions of the Commission of Enquiry may the dispute be referred to the Permanent Court of International Justice. It is thus before the Governing Body, the administrative organ of the Organisation, that the complaint is lodged, and it is for the Governing Body to decide whether action is to be taken on the complaint (Article 411, paragraph 3: "The Governing Body *may* apply for the appointment of a Commission of Enquiry").

The theory of reciprocity must therefore be given up. It is with respect to the Organisation that the States Members have assumed the obligations arising from the Treaty, and it is also with respect to the Organisation that they assume the obligations arising from ratification of a Convention.

Mr. Olivetti, in his Note, summed up his argument as follows [1]:

... Labour Conventions are complex instruments resulting from:

(*a*) A decision of the Conference laying down an approved method of settlement, a "*règlement-type*", for a particular question, and as regards the International Labour Organisation this "*règlement-type*" is independent of any ratification.

(*b*) Ratifications representing the unilateral obligation of each State to observe as "*norma agendi*" the decisions of the Conference.

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[1] *Ibid.*, pp. LI-LII.

The essence of a ratification is that it is the condition upon which depends for each State the coming into force of the decisions of the Conference.

During the discussion in the Standing Orders Committee of the Conference, Mr. Olivetti added other arguments, drawn from Article 406. They were summed up in his name by Mr. Marchesi at the Labour Conference in the following terms [1]:

> The Conventions are not multilateral contracts between States, but unilateral obligations between the ratifying State and the International Labour Organisation. In fact, under Article 406 of the Treaty of Versailles, a ratified Convention binds only the Members which have ratified it. It is only in the text of the Conventions, and not in the Treaty, that the condition is mentioned that the Convention must be ratified by two or more States before it comes into force. The first State to ratify is bound by its ratification, even if the Convention has not come into force. But bound with respect to whom ? Not with respect to other States, because it alone has ratified. It follows that it is bound with respect to the International Labour Organisation.
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> Similarly, if all the States that have ratified a Convention denounce it, with the exception of one only, that State, which does not wish to denounce the Convention, though it has the right to do so, remains bound. But with respect to whom ? Not to other States, because it is alone in not having denounced the Convention. It follows that it is with respect to the International Labour Organisation. It is clearly inadmissable that a State that has ratified a Convention and has thus bound itself should be bound at one time with respect to other States and at another time with respect to the International Labour Organisation.

My object in reproducing this series of arguments is to display its wealth and complexity. I shall now try to deal with the different points in turn.

Taken as a whole, it appears to me to rest on a confusion. There can be no doubt that the States Members of the International Labour Organisation have, as such, certain obligations. They assumed them by signing—and ratifying—the Treaty of Versailles and, in particular, Part XIII. This is the position for all international unions, and the Organisation is nothing but a union of this kind. In forming it, the States Members formed an association, an international association within a greater one, namely, the League of Nations. An association is, in essence, a system setting up standards of conduct or rules of law, formed by persons or legal entities, in the present case the States that have ratified the Treaty of Versailles. Their obligations as an

[1] *Idem*, No. 21, 17 June 1929, pp. 339-340.

association are many and various : they are enumerated in the Preamble to Part XIII, the Labour Charter (Article 427), and all the regulations concerning the working of the International Labour Organisation. There can be no question that it is here that the *Vereinbarung* is realised, the "collective treaty formulating rules of law".

It may be said that the Members have these obligations "towards the Organisation", though the expression does not seem to me wholly accurate. They have assumed these obligations towards each other *with the aim* of constituting a union.

But the fact that they thus have obligations towards the Organisation in no way implies that they cannot have true contractual obligations towards certain of their fellow associates, with whom they may have concluded a Labour Convention. In effect, the point to be proved here is not that there exists an organisation devised for the purpose of getting Labour Conventions made, but that these acts, made in pursuance of the constitution of the union, are not true Conventions.

Now, everything in the text of the Treaty, the preparatory work, and the past history of international labour legislation alike, goes to show that what was intended was indeed to arrive at the conclusion of Conventions.

First, the past history. There were two stages : the Berlin Conference of 1890, where only resolutions were adopted ("It is desirable that . . .")[1], and the Berne Conferences of 1905, 1906 and 1913, where incontestable Conventions were concluded, although without sanctions and without a Permanent Organisation.

Next, the preparatory work. This clearly shows that the aim was to progress beyond the Berne system and to create a permanent body for the making of Conventions rapidly, by competent persons, and so as to be accepted by the employers and by the workers, and nothing but Conventions. The idea of a Super-Parliament was relegated to a resolution, for future consideration.

Finally, the text of the Treaty. Is it possible that, by accident, it has betrayed its authors and contains proof that the

[1] During the morning sitting of 17 March 1919 of the Commission on International Labour Legislation, in the discussion with the American Delegation, Mr. Arthur Fontaine objected that the method of "Recommendations" proposed was practically that of the Berlin Conference (cf. *Official Bulletin* of the International Labour Office, Vol. I, p. 153).

idea of Conventions was abandoned? On the contrary, it speaks only of Conventions (Article 405, paragraphs 7 and 8, Articles 406, 407, 408, 411, 421, 423) or Draft Conventions (Article 405, paragraphs 1-5, 7, 9, 11, Article 407). To assume that the authors of the Treaty were mistaken to the extent of not saying what they wanted to say, calls for a complete distortion of the sense of words.

That these Conventions have peculiarities, singularities, anomalies even, is self-evident and is a natural consequence of the very fact that it was hoped to improve on the methods inaugurated at Berne. Hence, among other things, the idea of making a Convention in a single Session of the Conference, which includes both experts and Government representatives; the adoption of the text by a two-thirds majority; the suppression of signature by diplomats; the system of "submitting" the Draft Convention adopted to the competent authorities, within a given period; the suppression of the exchange of ratifications; the supervision of application (Article 408); and, finally, the sanctions.

There is nothing surprising in the fact that, among these various improvements, there are some which are inherent in the Permanent Organisation itself, and constitute what may be called obligations of the States towards that body. How could it be otherwise, when it is proclaimed, as already recalled, that "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"? It is this conviction that led to the Organisation having the supervision of the application of Conventions (Article 408) and the whole system of sanctions placed in its hands. Sanctions are not left to the discretion of the contracting parties to the Convention, because individual Governments would not make use of them.

### *Necessity for more than one Ratification*

All this can in no way affect the fundamental act that is the aim and *raison d'être* of the union, the Labour Convention. In essence this certainly remains a multilateral treaty. This was why even at the First Session of the Conference at Washington, when the moment came to put the substantive texts voted by

the Conference into the form of a Convention as required by Article 405, the first care of the Drafting Committee was to draw up the clause which afterwards became a standard Article :

> As soon as the ratifications of *two* Members . . . have been registered with the Secretariat, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organisation. This Convention shall come into force at the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members which have registered their ratifications.

The Reporter of the Committee, Mr. Manley O. Hudson, now Professor of International Law at Harvard, briefly explained in his report during the afternoon sitting of 28 November 1919 : "Clearly one country should not be bound internationally by a Draft Convention unless it is ratified by other countries. . . ." [1]

This was the way in which Article 406 was interpreted at Washington and until the Twelfth Session, and, in my opinion, it is in this way that it ought to be interpreted. I would not dwell too much on a fine shade, a subtlety in drafting, but sufficient attention has not been paid to the plural employed in the text : "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." This plural implies a plurality of ratifying Members.

The preparatory work for the text of the Treaty best shows that this is the right interpretation. Article 19 of the original British draft was as follows :

> Any Convention so ratified shall be registered by the Director with the Chancellor of the League and shall, subject to any conditions as to ratification which may be contained in the Convention itself, be binding upon all States which have ratified it or which shall subsequently adhere to it.

In his explanation, given during the sitting of 19 February 1919, Mr. Barnes said, among other comments :

> The conditions as to ratification referred to, which might be included in a Convention, might include, for instance, a condition that a Convention shall not be regarded as finally adopted unless it has been ratified by a sufficient number of States.

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[1] Mgr. Nolens, the eminent Netherlands Delegate, also put it very clearly at the Twelfth Session of the Conference : "A Draft Convention becomes a Convention when there is not one ratification, but at least two." (*Provisional Record*, No. 21, 17 June 1929, p. 341.)

When the Commission's draft was submitted to the Peace Conference, it was again Mr. Barnes who said :

> Then the words in Clause 20 to which I have referred, if a State adopts a Convention it shall not be obliged to accept that Convention because there might be words in the Convention—what we have in mind is this : that the Convention might not be enforceable, to use a word which is in the document—it might not be applicable unless it was found that a certain number of States or a certain proportion of States had also adopted it. [1]

Article 406 must therefore be read in the sense that a ratified and registered Convention binds the Member if there are one or more other ratifications. I do not hesitate to say that I see no difficulty in admitting that a Member that has ratified and had its ratification registered is not bound so long as it remains the only Member to have ratified, and that, in consequence, the same solution must be accepted when there is only one Member left to have ratified, owing to the denunciation of the Convention by all the rest.

It must not be objected here that, in these two cases, the Governing Body may of its own motion set going the procedure of sanctions, under Article 411, paragraph 4. This procedure can apply only to a Convention actually in force. Now the Convention is not yet in force if there is only one ratification, and it is no longer in force if only one ratification is left. Besides, in discussing texts, we must not lose sight of common sense. Would any Governing Body set a procedure of sanctions in motion against a State for the application of a Convention that no one else has been willing to ratify? And in the case of a Convention denounced successively by all the Members that had ratified it, but one, a sanction against that one is equally inconceivable.

### *The Arguments drawn from Sanctions*

All the arguments drawn from sanctions, moreover, tend to mislead. The intervention of the Governing Body is in no way a consequence of the defaulting Member's having entered into a contract with the Organisation. It is a measure of organisation, a precaution taken in the general interest against default by one

[1] *Official Bulletin* of the International Labour Office, Vol. I, p. 291. It will be observed in passing that, as early as Paris and Washington, the possibility of conditional ratifications had been foreseen.

party to the Convention, which the other parties would not or dare not criticise. The function of the Governing Body, as Dr. Oersted has pointed out, is very modest. All it does is to apply for the appointment of a Commission of Enquiry, and in the last resort the decision is taken by the Permanent Court of Justice. In all this, there is no trace of a right of a contracting party—in the present case, the Organisation—against a defaulting co-contracting party.

There is even less force in the argument drawn from what may be called the right of informing given by Article 416 to any Member against a Member that fails to take the action required by Article 405, and by Article 411, paragraph 4, to any "Delegate to the Conference" against a Member that fails to secure the observance of a Convention it has ratified. The right of complaint contained in Article 411, paragraph 1, moreover, does not rest on the Convention itself. The measures in question here have the character of penal measures rather than of effects of a Convention.

### *The Special Conventions of Article 407*

Arguments have also been drawn from the fact that Article 407 allows States Members to "agree among themselves" to a Convention that fails to secure a two-thirds majority. The Conventions "so agreed" (in French : *particulières),* it is argued, are true Conventions, but the others are not.

This is a total error. There is no difference in kind between these Conventions and the others. A Draft Convention that has not been adopted by a two-thirds majority is offered to the Members for ratification like the others. It will certainly not become a Convention until at least two States have ratified it.

Article 407 merely affirms a principle of general law for which there was a precedent at Berne in 1906, when the Phosphorus Convention was concluded.

### *The Legal Nature of the Organisation*

If I were asked my conception of the legal nature of the International Labour Organisation and the machinery of Conventions, I should reply, that it forms an association between States, or, as it is generally put, an international union, constituted essentially with a view to facilitating, giving rise to, and

rendering effective International Conventions concerning labour. To this end, the States Members have assented to what Mr. Vandervelde called abdications of sovereignty, though, of course, to a limited extent. In pursuance of its aim, the union offers its Members model Conventions—the "Draft Conventions"—which the Members turn into perfect Conventions by their ratification, which act is completely free. These Conventions have features of their own : first of all, from the point of view of form, and also from other points of view. For instance, they are essentially Conventions open to all members of the Organisation, and they are subject to a procedure of sanctions—yet another abdication of sovereignty on the part of the Members. But they still remain Conventions in the ordinary sense of the word, requiring the concurrence of the separate intentions of each contracting party, a concurrence that cannot exist without a plurality of intentions. Each Convention so concluded forms, among the Members concluding it, a small association within the larger, and establishes a special system setting up standards of conduct or rules of law between the contracting parties. This system may be and usually is a *Vereinbarung,* but it can also be a true commutative contract, as in the case of equality of treatment for national and foreign workers. As regards the legal effects of these Conventions on the national law of each State, these do not differ from those of other Conventions of the kind, for instance, the Berne Conventions.[1]

The conclusion to be drawn from all these considerations is that the obligations assumed by the States in Labour Conventions are indeed assumed towards each other and not only towards the Organisation. Their obligations towards the latter are those of members of an association formed for a common end, which involve restrictions on their sovereignty and are not derived from the conclusion of Labour Conventions.

## The "Standard Articles"

The twenty-eight Conventions hitherto adopted by the International Labour Conference all contain, after their substantive

[1] The many problems arising out of the relations between national law and the Conventions are left out of account here. They deserve separate study. Cf. on this subject an interesting thesis presented to the Faculty of Law of the University of Amsterdam by Mr. H. van Zanten : "L'influence de la Partie XIII du Traité de Versailles sur le développement du droit international public et sur le droit interne des états (L'organisation permanente du travail)". Leyden, 1927, 156 pp.

provisions, eight Articles which are repeated almost word for word in each. These provide for the registration of ratifications, the application of the Convention to colonies, the notification of ratifications, the date the Convention comes into force, the right of denunciation, revision, and authentic texts.

These were the eight Articles formerly referred to as "formal Clauses" or "formal Articles", and now called "standard Articles". They are the work of the Drafting Committee of the Washington Conference, to which they were submitted on 28 November 1919 by Mr. Manley O. Hudson.

It is to Dr. Oersted that credit is due for drawing attention to the disadvantage of the automatic repetition of these Articles. It has been recognised that many of them are in fact substantive Articles, which can and should vary with the contents of the Convention of which they form part. For this reason the Conference does not insert them in its Standing Orders, but refers them to the various committees responsible for drafting the Conventions, as rules preferable to those hitherto observed, with instructions to examine their suitability in each case, with due regard for the uniformity that is desirable.

These "standard Articles" were examined on several occasions by the Governing Body and the Conference in 1928 and 1929. The result has been the suppression of two superfluous Articles : the first, reproducing Article 421 of the Treaty; the second, fixing the latest date for the application of the Convention. Other Articles have been modified and supplemented, but it is unnecessary to go into full details here; it will be sufficient to consider the two most important formalities, denunciation and revision.

### *Denunciation*

The Article concerning denunciation as formulated at Washington fixed the period at ten years from the date on which the Convention first comes into force; this term of ten years was repeated in all the Conventions, except two of those adopted at Genoa in 1920, in which the right of denunciation was allowed after five years.

The first modification proposed was to leave the time limit for denunciation indefinite. The provision is not a formal one, but a substantive one, which may vary with the subject of the Convention. If the Convention is regarded as an experiment, a shorter time limit will be fixed; if, on the contrary, it is proposed

to establish it for a longer period, the time limit will be longer. The number of years was therefore replaced by a letter *y*, and the first paragraph of the Article was worded as follows :

A Member which has ratified this Convention may denounce it after the expiration of *y* years from the date on which the Convention first came into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

The old Article stopped there. The result was that a Convention that had passed the time limit for denunciation was in a precarious situation, as any Member that had ratified it could denounce it at any time. This is now true, for instance, of the maritime Conventions of Genoa. Here was a gap, which it was decided to fill. But opinion was against fixing the second time limit *ne varietur*, on the ground that special circumstances might make it desirable to have a shorter or longer time limit than the previous one. Here again the question is one of substance and not of form, which it is for the competent committee of the Conference and for the Conference itself to decide.

The second paragraph of the Article was therefore worded as follows :

Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of *y* years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of *z* years and, thereafter, may denounce this Convention at the expiration of each period of *z* years, under the terms provided for in this Article.

### *Revision*

The standard Article concerning revision had been adopted at Washington in the following form :

At least once in ten years (in French : *au moins une fois par dix années*) the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference (in French : *décidera d'inscrire à l'ordre du jour de la Conférence*) the question of its revision or modification.

In support of this Article the Reporter of the Drafting Committee, Mr. Manley O. Hudson, said :

The next Article directs the Governing Body to consider, at least once in ten years, the desirability of placing on the agenda of the

Conference the question of revising or modifying the Draft Conventions. Under the Labour Part of the Treaty of Peace it is, of course, open to the Conference or the Governing Body to place any question upon the agenda at any time, but it has seemed well to insert the Article here proposed. It will be observed that this Article in no way encourages unnecessary action which may disturb settlements already arrived at, but it simply contemplates the study of the working of the Draft Conventions in order that their revision may be considered in case their provisions may appear to have become obsolete.

To these reasons another should be added, of a legal nature, which was not discussed before the Conference, but has been of some importance. It is a reason of the same kind as that which led to the adoption of Article 19 of the Covenant of the League of Nations: "The Assembly may from time to time *(de temps à autre)* advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world." American jurists had been struck in the discussions arising out of the war by the use made of the clause *"rebus sic stantibus"* which is tacitly held to be included in all treaties. Hence the idea that a stipulation cannot be made for all time; hence, again, the idea of a necessary revision of treaties "from time to time".

The wording of the Article was not perfect and gave rise to heated discussion. The words "at least once in ten years" obviously ought to mean "at least once in a period of ten years from the date the Convention comes into force". It is clear that, as the Reporter said, the intention was to allow of the revision of the Convention even before it was ten years old. It is interesting to note that the first draft of the Article ran :

> The General Conference of the Labour Organisation may, at any time after five years from the date on which this Convention shall first come into force, propose the revision or modification of this Convention, and in any case, at least every ten years after the date on which this Convention shall come into force, the Governing Body of the International Labour Office shall consider the desirability of placing on the agenda of the Conference the question of the revision or modification of this Convention.

It was therefore originally accepted that for a period of five years the Convention should not be subject to revision, but even this period of immunity was subsequently given up.

Furthermore, the French text appears to compel the Governing Body to place revision on the agenda by saying *"décidera d'inscrire"*. The English text, on the contrary, says that the

Governing Body "shall consider the desirability" of placing it on the agenda. Although both texts "are authentic", it is the English text in this particular case that expresses the intentions of its authors.

The words "revision" and "modification" (which are the same in English and French) have given rise to much controversy in the Standing Orders Committee and the Governing Body. Some considered that there was a redundance, since both words meant the same thing, assuming that "revision" denoted "re-examination". Others, on the contrary, maintained that there was a clearly marked distinction : revision meant total revision, modification meant partial revision ; and they therefore concluded that the Governing Body had the right to choose, and to place either total revision or modification on the agenda. To this argument it was objected that modification was always revision.

In actual fact this Article has not yet been applied. But it should be remembered that as early as 1921 the British Government asked the International Labour Office that the Conference should re-examine the Convention on hours of work with a view to rendering it more flexible and bringing it into harmony with certain industrial practices in Great Britain. This question was officially referred to the Governing Body at its Tenth Session, when it definitely refused to place it on the agenda of the Conference on the ground that too short a time had elapsed since the Convention was adopted to think of modifying it. It was then that the idea took shape that the Draft Conventions might be made to contain some formula which should facilitate a larger number of ratifications. At the 1922 Session of the Conference Mr. Albert Thomas suggested that some procedure for the amendment of future Conventions should be devised which would enable States to modify the provisions adopted, even after ratification. The question was given long and careful consideration by the Conference, but it was decided not to provide in the Conventions themselves for a procedure whose primary effect would be to weaken the obligations assumed. The procedure for amendment was rejected. Subsequently the Conference adopted, first, the procedure of double reading, and later, that of double discussion, which is still in force.

But the more nearly the term of ten years fixed by the Washington Conference approached its end, the more thought was given to the revision of Conventions. The Washington Conference had adopted six Draft Conventions, of which five came into

force on 13 June 1921, and the sixth on 14 July. It is therefore in 1931 at latest that the question of revision must be placed on the agenda of the Conference by the Governing Body, which must previously have submitted a report on the working of each Convention. After that, there will in every year be some Convention calling for the same procedure. The question is therefore clearly of immediate interest.

It came into the forefront of the deliberations of the Governing Body when, in February 1928, the British Government without warning submitted to it a formal request for revision of the Washington Convention on hours of work. On that occasion the British Government did not indicate precisely on what points it wished to have the Convention revised. It stated its difficulties, but not its remedies. As may well be imagined, this proposal, made by a Conservative Government, met with the resolute opposition of the Workers' Group, as well as of the Governments that had ratified the Convention. The Governing Body, therefore, again rejected the invitation to place revision on the agenda and devoted itself to preparing the ways and means of revision by a study of the procedure to be adopted for this purpose.

The first point to determine was the rules to be followed by the Governing Body : next, the rules to be followed by the Conference; and finally, the clauses to be inserted in the Conventions, both the revising Conventions and the others.

An admirable basis for the discussion on this set of questions was provided by the studies of the Chief of the Legal Service of the International Labour Office, Mr. Jean Morellet, Doctor of Law. At the various stages of the work he submitted carefully drafted memoranda displaying as much common sense as knowledge of law.[1]

Before discussing the results arrived at, I should like to state the reasons for which at a certain point I supported the view that it was better to suppress the standard Article providing for revision. In my opinion it would have been possible to maintain the ten-yearly report of the Governing Body on the working of the Convention, but without obliging it to consider the desirability

[1] In particular, in a memorandum submitted to the Governing Body and printed in the *Provisional Record* of the Conference, Twelfth Session, No. 2, 30 May 1929, he suggested three possible formulae for revising Conventions, and studied the legal effects of each. The Governing Body and the Conference adopted the formula which consists in inserting in the new Convention the provisions retained from the revised Convention, so that the new text may be complete in itself without the need of reference to the old one.

of placing the question of revision on the agenda of the Conference.

In effect, unless it is admitted that the Conference has legislative powers, a view I cannot accept, it must be recognised that a Convention can only be revised by concluding a new one. Even in order to modify some only of the provisions of the old Convention, it is indispensable to go through the whole of the ordinary procedure and to arrive at a new "Draft Convention". Whatever the position may be, the Governing Body and the Conference always have the right to make a Convention on any subject whatever, hence even on one that has already been dealt with in a previous Convention. It follows that the suppression of the standard Article would not affect any of the rights of the Conference or of the Governing Body, or prevent the revision of a Convention if and when this is necessary.

But the Article in question invites revision by imposing a formal obligation on the Governing Body to examine its desirability by a fixed date. Now this appears to me incompatible with the fundamental idea of international labour legislation, which is universality and stability. What is the object of thus provoking periodical crises, or at least uncertainty and hesitation? There can be no doubt that the expected British demand for the revision of the Eight-Hour Day Convention has prevented other States from ratifying it. When it is remembered that all the Conventions will automatically undergo this test every ten years, it is impossible not to believe that labour legislation will suffer.

In reply to the recommendation that the making of everlasting treaties should be avoided, my answer is that there are two ways of putting an end to a Convention that has become obsolete or inapplicable : the first, denunciation, which is at the individual disposal of any State that has tried the Convention and considers it unsuited to its needs : the second, revision in consequence of a proposal to the Governing Body or the Conference.

These reasons did not convince all my colleagues on the Standing Orders Committee. Tradition was invoked : if the Article were suppressed, it might be believed that all revision was objected to. Denunciation had not the same effect as revision, since it left the Convention in existence with all its defects. As to the initiative in proposing revision, this was exposed to all the risks of a majority vote. In view of the opposition of important

Governments, I withdrew my proposal to suppress the Article.

It must be admitted, moreover, that this suppression would not have avoided the very serious difficulties inherent in any revision.

As already stated, the first step taken by the Governing Body was to define its own procedure. A new Article (7*a*) was added to its Standing Orders.

The first point was easily settled : it is the Governing Body that has to report to the Conference on the working of a Convention, and not the Office. The latter provides the Governing Body with all the necessary material. A special point was made of asking for all relevant information, not only on the working of the Convention in those countries which have ratified it, but also on "the legislation relating to the subject of the Convention and its application in those which have not ratified it".

This report on the working of the Convention is sent two months in advance to the members of the Governing Body, which considers the question of placing revision on the agenda of the Conference. If it decides against such action, the report is merely communicated to the Conference. In the opposite case, the report is sent to the Governments of all the States Members, who are asked for their observations, attention being drawn "to the points which the Governing Body has considered specially worthy of attention". This consultation is obviously necessary if the Governing Body is to have information on the wishes of, in particular, Governments not represented on the Governing Body. Mgr. Nolens did not fail to insist on this point at the Conference.

A great battle was waged in the Governing Body over the way in which it could finally bring the question of revision before the Conference. Once revision has been decided on, could the Governing Body, with only the way it had drawn up the agenda as its authority, limit the discussion and decisions of the Conference? The interest of this question is immediately evident on consideration of the Eight-Hour Day Convention. If the whole Convention can be thrown into the melting-pot, its fundamental principles may again be called into question. Hence the importance of the distinction between "revision" and simple "modification".[1] This is not all. Supposing that the Governing Body were

[1] Although the Standing Orders naturally had to cover any kind of revision, hardly anyone was thinking of anything but the revision of the Eight-Hour Day Convention.

to follow the example of a parliament revising a national Constitution and arrange for the discusssion of certain Articles to the exclusion of all the others, how is the Conference to be prevented in its sovereign deliberations from touching on others? The following solution was arrived at. The Governing Body will place certain questions on the agenda and thus determine the points that may be the subject of revision. If the Conference wishes to deal with other questions, it may do so, but only by passing a resolution by a two-thirds majority and referring the matter to the following Session, in accordance with Article 402, paragraph 3.

The Employers' Group strongly opposed this conception of revision. It contested the Governing Body's right to limit the powers of the Conference by the way it drew up the agenda. Once revision had been decided on, the Group would have preferred that it should be open to any delegate to submit amendments to any Article of the Convention. This would certainly have opened the way to the overthrow of all Conventions, and the Governing Body refused to adopt this view.

It is clear that the principal difficulty lies in the drawing up of the agenda. It will be the business of the Governing Body to see that the essential provisions of the Convention to be revised remain untouched, while allowing sufficient latitude for the deliberations. With this end in view, it seems inexpedient to indicate the *Articles* to be revised; what is wanted is rather to specify the *questions* in respect of which revision is contemplated. If, for instance, it is wished to revise the Convention concerning the age for admission of children to industrial employment, the item placed on the agenda will be "the determination of the age", and not the number of the Article concerned.

After settling the procedure for the Governing Body, that for the Conference had to be considered. This was the subject of a revision of the Standing Orders at the Twelfth Session. Only some of the provisions relating to ordinary procedure had to be modified. There was, of course, the same discussion and the same opposition concerning the limitation of revision, but the Conference upheld the system adopted by the Council.

First of all, the terms that had proved ambiguous were clearly defined : the expression "revision or modification" was changed to "revision in whole or in part". Next, this initial paragraph was adopted :

The International Labour Office shall submit to the Conference draft amendments drawn up in accordance with the conclusions of the report of the Governing Body recommending the revision in whole or in part of the Convention previously adopted and corresponding to the question or questions in respect of which a proposal for revision has been placed on the agenda (in French : *à la ou aux questions dont la révision figure à l'ordre du jour*). In accordance with Article 400 of the Treaty of Versailles and subject to the provisions of Article 402, paragraph 3, of the said Treaty, the Conference shall not revise in whole or in part a Convention which has previously been adopted by it save in respect of the question or questions placed by the Governing Body on the Agenda of the Session.

This is followed by the ordinary provisions for drawing up a Convention. But a slight extension of the powers of the Drafting Committee had to be provided for. The revision of a clause may have necessary effects (questions of form and of drafting) on other clauses; possible instances are the numbering of Articles, changes in terminology, etc. For this reason the following paragraph was adopted :

The amendments, together with consequential amendments of the unamended provisions of the Convention under revision, as adopted by the Conference, shall be referred to the Drafting Committee, which shall combine with them the unamended provisions of the Convention under revision, so as to establish the final text of the Draft Convention in the revised form. This text shall be circulated to the Delegates.

The rest of the procedure follows the ordinary rules. In particular, the power of the President of the Conference, after consulting the three Vice-Presidents, to allow discussion on a last-minute amendment is maintained.

The new Article thus adopted concerning revision altered the Washington Article in two respects. First, it replaced "revision or modification" by "revision in whole or in part"; secondly, instead of leaving the Governing Body's obligation to consider the desirability of revision in uncertainty for a period of ten years, it fixed it at the expiration of a period, to be specified in each Convention, which may vary with the time limit for denunciation or other circumstances. These amendments were approved by the Conference by a very large majority, 74 votes to 12. The text adopted is as follows :

At the expiration of each period of *w* years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the Agenda (in French : *et décidera s'il y a lieu d'inscrire à l'ordre du jour*) of the Conference the question of its revision in whole or in part.

Next, the omission of the old standard Articles had to be made good, and the legal effects of revision defined. As it is future Conventions that are concerned, there is nothing to prevent the stipulation—*between the parties* this time, i.e. between the Members which ratified the original Convention—of conditions of denunciation not to be found in the earlier Conventions.

A question arose here which caused much discussion : should the abrogation of the revised Convention be stipulated in advance, or should two Conventions on the same subject be allowed to exist side by side ?

The general rule is that as long as the original Convention has not been denounced by all the contracting parties (or rather, by all the contracting parties but one), it remains in force for those which have not denounced it. But this original Convention may contain a clause providing in advance for its own abrogation after the adoption by all the contracting parties, or a large proportion of them, of a new revised Convention. A case of this kind occurred in the Convention of the Universal Postal Union signed at Madrid on 13 November 1920, which states that as from the date the said Convention came into force the stipulations of the Convention of the Postal Union concluded at Rome in 1906 were abrogated. This provision applies solely to the States that have ratified both Conventions.

Many delegates to the Conference were surprised to learn that in international law two different conventions were often to be found with the same object, one revising the other, yet both in force. No doubt this is an *inelegantia juris,* which may lead to inextricable situations. It is particularly illogical and ill advised in a subject like labour legislation, where uniformity is aimed at.

Yet the occurrence is not only possible—it has actually happened. At the present moment there are two International Labour Conventions fully in force, which have the same object and different provisions. When the second was adopted, it was not suspected that it in fact represented the revision of a Labour Convention. The Convention in question is that prohibiting the employment of women during the night in industry. The Convention signed at Berne on 26 September 1906 by thirteen States had been ratified by twelve of the signatory States by the time the Washington Conference met in 1919. The Organising Committee of this Conference, wishing to lighten its labours and

avoid raising any question as to the results achieved by the Berne Convention, proposed purely and simply to recommend all States Members that had not ratified to adhere to the Berne Convention, which was in fact a Convention open to all (Article 9). But the Committee on Women's Employment did not accept the views of the Organising Committee, and proposed to the Conference that a completely new text should be drafted, which was submitted on 20 November 1919 by the Reporter of the Committee, Miss Constance Smith. Its text contained a certain number of important modifications. In particular, it called for the suppression in Article 1 of the limitation of the Convention to undertakings employing over ten workers, men or women. "Such a distinction is at variance with the trend of all modern factory legislation", says the report simply. And the Conference adopted a Draft Convention containing seven substantive Articles, some of which differed perceptibly from those of the Berne Convention.

What happened with respect to ratification? The Washington Convention was first ratified by Greece (19 November 1920) and Rumania (13 June 1921), two States that had not adhered to the Berne Convention. The Washington Convention thus came into force on 13 June 1921. Then the following ratifications were registered successively: in 1921, those of Great Britain, India, Czechoslovakia, and the Union of South Africa; in 1922, Bulgaria, the Netherlands, Switzerland, and Estonia; in 1923, Italy; in 1924, Austria and Belgium; in 1925, France and the Irish Free State; in 1927, Yugoslavia; in 1928, Luxemburg, Hungary, and Cuba. Altogether, the Convention has nineteen ratifications. But it is interesting to note that some States which have ratified the Berne Convention, such as Germany, have not ratified the Washington Convention, and that many of those which have ratified the Washington Convention had ratified the Berne Convention and have not denounced it. The latter include Great Britain, the Netherlands, Switzerland, Italy, Austria, Belgium, France, Luxemburg, and Hungary. In theory, they are therefore bound by both Conventions. Fortunately, the Washington Convention is the stricter in that it covers all industrial undertakings. So far as Germany is concerned, however, it is only the provisions of the Berne Convention that have to be applied in certain laws and orders. The new Labour Code now being prepared contains a section which will bring German legislation into agreement with the Washington Convention.

The above instances will show the inconsistencies and difficulties that may arise from the co-existence of two Conventions. The first idea was therefore to prevent the possibility of such an occurrence by stipulating in every future Convention the abrogation of the original Convention (*an abrogation agreed to in advance by the contracting parties*) as soon as the new revising Convention comes into force.

On reflection, however, this was felt to be rather dangerous, for the new revising Convention may not receive many ratifications, and it will be remembered that the International Labour Organisation cannot impose ratification on its Members. In particular, the new Convention may fail to be ratified by the Members that have ratified the first, and then what is the position ? In those countries labour protection might be diminished or even withdrawn; the result of trying to improve the Convention would thus ultimately be to restrict its field of application.

It was finally agreed that it was better to run the risk of having two co-existing Conventions than to suppress one of them automatically. This explains the text ultimately adopted :

> Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention would, notwithstanding the periods of delay mentioned in the foregoing Article (*d*), involve the immediate denunciation of this Convention, provided that the new revising Convention has come into force.
>
> As from the date of the coming into force of the new revising Convention, the present Convention would cease to be open to ratification by the Members.
>
> Nevertheless, this Convention would remain in force in its actual form for those Members which had ratified it but had not ratified the revising Convention.

The reservation at the end of the first paragraph "provided that the new revising Convention has come into force", will be observed. If, therefore, its coming into force depends on the ratification of two or more Members, the first Convention will remain in existence until the fulfilment of this condition. This explicit reservation is precisely that described above as implicit in Article 406. This Article applies not only to the ordinary, i.e. the original, Convention, but also to a Convention revising it. There is in fact nothing to prevent the Conference from submitting a single Convention to several successive revisions. It will then be for the competent committee and for the Conference to determine carefully on which ratifications the coming into

force of the second revision is to depend. If it is wished to avoid the co-existence of two Conventions, nothing could be easier. It will be sufficient to stipulate in the earlier Article, relating to the coming into force of the Convention, that all the contracting parties to the previous Convention should have ratified the new one.

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It may perhaps be considered surprising that after ten years there should be so many legal questions giving rise to discussion, doubt, and the revision of texts. But this can surprise only those who refuse to recognise that the law is of a piece with the life of human society.

The League of Nations, like the International Labour Organisation, is concerned in the formation of new social links between nations. These links are the essence of the law; and with the development of the life of human society—of life itself, indeed—in the several States, the law must necessarily change, grow, and develop. Its onward motion, we may safely say, is unceasing. Here is the true mode of realisation of the progress of Social Justice.