The Application of International Labour Conventions by means of Collective Agreements

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I. THE PROBLEM

When the constitutional arrangements of the International Labour Organisation were thoroughly reviewed immediately following the Second World War there was considerable discussion of the possibility that the ratification of Conventions by countries where collective agreements play a large role in the regulation of working conditions would be greatly facilitated by the inclusion in the texts of Conventions of provisions contemplating that they may be applied by means of collective agreements without the existence of legislation. The Conference Delegation on Constitutional Questions, which examined the matter on behalf of the International Labour Conference, recommended that it should be further studied. A sufficient period has perhaps now elapsed to make it desirable to review the question afresh.

Article 19 of the Constitution of the International Labour Organisation, as amended in 1946, provides that each Member of the Organisation ratifying a Convention "will take such action as may be necessary to make effective the provisions of such Convention" (§ 5 d) and that in respect of such Conventions as it does not ratify each Member will "report to the Director-General of the International Labour Office at appropriate intervals as requested by the Governing Body, the position of its law and practice with regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention, by legislation, administrative action, collective agreement or otherwise, and stating the difficulties which prevent or delay the ratification of such Convention" (§ 5 e).

The 1946 Conference Delegation on Constitutional Questions commented on these provisions in the following terms:

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"57. The proposed amended text of Article 19 of the Constitution providing for reporting on unratified Conventions which has been recommended by the Delegation would involve the inclusion in the Constitution for the first time of an allusion to the possibility that the provisions of a Convention may be applied, to a greater or lesser extent, by means of collective agreements. Collective agreements are playing an increasingly important part in the regulation of industrial life in countries with highly developed industrial organisations, and it is clearly desirable that the activities of the International Labour Organisation should tend to foster rather than to frustrate this tendency. It is for this reason that it has been suggested that provision should be made to enable Members of the Organisation to ratify Conventions on the basis of collective agreements. But whereas a collective agreement, unless its authority has been extended by the State, represents a mutual obligation only between the parties to the agreement, the ratification of an international labour Convention involves an obligation by the State to all other States which have ratified the Convention [1]). The question how far collective agreements can be used as a basis for the ratification of Conventions therefore resolves itself into two other questions. How far can the State assume responsibility for a collective agreement, as a basis for the acceptance of precise international obligations for a substantial period of time,without destroying the freedom of relations between employers' organisations and trade unions and the adaptability to changing conditions which have been the outstanding features of the system of collective agreements? Conversely, how far can international labour Conventions be made more flexible in content, and open to reconsideration at frequent intervals in the same manner as collective agreements, without destroying the reciprocity of precisely defined obligations for fixed periods which has been the characteristic feature of the Convention system as it has operated hitherto? The answers to these questions may differ in respect of different types of subject matter. Some provisions of collective agreements, notably those relating to wages and to a lesser extent those relating to hours of work, tend to be changed at frequent intervals; others, such as those regulating methods of wage payment, overtime, apprenticeship and discipline, may continue with little or no modification for substantial periods and represent standards which, while likely to be further improved in the future, are unlikely to deteriorate in time of peace. The answers may also differ considerably from industry to industry and particularly from one country to another. In certain countries there is a marked tendency to give collective agreements the force of law in certain circumstances and to make them binding upon minorities; in other countries this tendency is much less developed or unknown. The Delegation considers it extremely desirable that a thorough study of current tendencies in respect of the matter should be published by the Inter-

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[1]) Further difficulties arise in the case of States in which are formed collective agreements applicable only to limited areas within the State.

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national Labour Office to supplement the study published ten years ago [2]). The issues involved are so complex in character that it is not in a position to make any more definite recommendation on the subject at the present time" [3]).

A somewhat more detailed analysis of the varied forms in which the problem may arise and of the various devices which have been adopted in an attempt to make progress towards its solution may be of interest.

It is sometimes argued that the obligation of a party to an international labour Convention under Article 19 (5) (d) of the Constitution of the I.L.O. is not an obligation to legislate but an obligation to apply and that if effective application is ensured by some method other than legislation the absence of legislation is indifferent. No exception can be taken to this view as a theoretical proposition, but it seems undesirable to erect it into an axiom of policy as the circumstances to which it can apply are very limited. They can perhaps be classified as (a) cases where the facts to which the Convention relates do not exist and are quite unlikely to exist in the territory concerned, and (b) cases where a Convention relates to a basic standard which is in fact universally observed without legislation and is unlikely to be modified. Although it is true that it has never been laid down that legislation is always essential, and equally true that any such absolute assertion would be an overstatement of the case, it is equally true that a large proportion of the existing Conventions either explicitly or implicitly require legislation, not merely as a matter of practical necessity but as a matter of law in view of the terms of the Conventions. In most cases, admittedly, this requirement of legislation results from the manner in which subsidiary provisions are drafted, but the general result is none the less striking. In these circumstances it would seem that the only proper starting point for any adequate discussion of collective agreements as a means of applying Conventions is not the theoretically valid but practically unsatisfactory assumption that legislation is not indispensable in the absence of any provision on the subject in a Convention, but rather the assumption that for all practical purposes legislation is normally indispensable unless the Convention otherwise provides.

II. CLASSIFICATION INTO TYPES OF EXISTING PROVISIONS

The first stage in our enquiry must be to classify into a few main types the provisions relating to collective agreements which appear in existing Conventions. Nine types should be noticed:

[2]) I.L.O. Collective Agreements (Studies and Reports, Series A [Industrial Relations], No. 39, Geneva, 1936).

[3]) International Labour Conference, Twenty-Ninth Session, Montreal 1946, Report II (1), Reports of the Conference Delegation on Constitutional Questions, p. 48–50.

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Type one: Provisions relating to Exceptions

The first type consists of references to collective agreements which are in reality no more than provisions that the existence of a collective agreement is a condition which must be fulfilled before advantage may be taken of certain permitted exceptions. In some cases the competent authorities must grant permission to take advantage of the exception by giving the agreement the force of regulations [Hours of Work (Industry) Convention, 1919, Article 5], or by exercising in a certain way after conclusion of the agreement a discretion conferred by the Convention [Night Work (Bakeries) Convention, 1925, Article 2], or by sanctioning the agreement [Hours of Work (Coal Mines) Convention (Revised), 1935, Articles 13 (2) – 14]. In other cases derogations from the ordinary rules laid down by a Convention may, so far as the Convention is concerned, be made by collective agreement without confirmation by any public body [Hours of Work (Industry) Convention, 1919, Article 2 (b), Holidays with Pay (Sea) Convention, Article 2 (4), and Hours of Work and Manning (Sea) Convention, 1936, Article 8 (1) (c)] though experience in connection with the Hours of Work (Industry) Convention shows that in such cases certain States may only permit such derogations nationally by collective agreements approved by some public body. A third sub-type is exemplified by the provisions relating to the extension of hours on arrival and sailing days included in Articles 4, 5 and 6 of the Hours of Work and Manning (Sea) Convention, 1936. This variation is explained by the desire of the Conference that the question of additional hours should be regarded as outside the scope of the Convention, but from an international point of view these provisions have the same legal effect as provisions permitting exceptions by collective agreement. The fourth sub-type may be illustrated by the requirement contained in the Hours of Work (Commerce and Offices) Convention, 1930, Article 8, that in making regulations relating to exceptions special regard shall be had to collective agreements. Of all four of these sub-types it is equally true that no special difficulty arises in connection with them but there is no real similarity between them and provisions formally recognising that a collective agreement is or may be an adequate substitute for legislation as a means by which performance of the positive obligations resulting from ratification is to be secured. Provisions of the type at present under discussion may operate in some cases as restrictions upon the power of the competent authority to make exceptions and in other cases as provisions under which recourse may be had to exceptions without the sanction of the competent authority. In neither case do they avoid such necessity as there would otherwise be for the existence of legislation on matters of principle.

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Type two: Provisions Reserving Higher Standards

The second type consists of allusions to the possibility of a higher standard than that required by the Convention being fixed by collective agreement. Illustrations are the Hours of Work and Manning (Sea) Convention, Article 15 (2) and (3), where after the number of ratings to be carried is added in each case "or such larger number as may be prescribed by national laws or regulations or fixed by collective agreement", and the now numerous articles providing that "nothing in this Convention shall affect any law, award, custom or agreement between employers and workers which ensures more favourable conditions than those provided by this Convention". Provisions of this type are irrelevant to the problems now under consideration.

Type three: Provisions relating to the Definition of Standards in Greater Detail

The third type consists of provisions by which the standards prescribed by the Convention are to be defined in greater detail by national laws or regulations or by collective agreement. One group of such provisions consists of clauses to the effect that the compensation or remuneration due in certain circumstances shall be fixed either by national laws or regulations or by collective agreement [Sheet Glass Works Convention, 1934, Article 3 (2), Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935, Article 3 (2), Holidays with Pay Convention, 1936, Article 3, Holidays with Pay (Sea) Convention, 1936, Article 4 (2), Hours of Work and Manning (Sea) Convention, 1936, Article 10]. It seems probable that satisfactory application of these provisions can only be ensured in practice by the enactment of legislation which will at least define a procedure by which the compensation or remuneration due can be fixed in cases in which a collective agreement is not in force. The provision contained in Article 15 (5) of the Hours of Work and Manning (Sea) Convention that "National laws or regulations or collective agreements shall limit the number of ratings with less than one year's service on deck who may be counted as deck ratings for the purpose of satisfying the requirements of this article" is of the same type. The fixing of a number by collective agreement will satisfy the requirement of the Convention, but as the continued operation of the collective agreement cannot be guaranteed unless it is binding for the same period as the Convention in virtue of legislation the State will probably find it necessary at least to take power to prescribe a number if at any time there is no agreement covering all vessels to which the Convention applies.

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Type four: Provisions relating to the classification of persons to whom differing standards apply

The fourth type consists of provisions by which certain questions relating to the classification of persons to whom differing standards apply are left to be determined by national laws or regulations or by collective agreement. This type is illustrated by two provisions of the Hours of Work and Manning (Sea) Convention, 1936, Article 2 (b) (whether persons are ranked as officers) and Article 15 (7) (whether wireless operators and telephonists belong to the deck department). Provisions of this kind create no difficulty if it is clear what the position is in the absence of both legislation and a collective agreement. Judged by this standard Article 2 (b) of the Hours of Work and Manning (Sea) Convention is satisfactory, whereas Article 15 (7), which was added by the Conference, is not. If it is not clear from the Convention what class the doubtful people fall into in the absence of both legislation and a collective agreement, then in the absence of a collective agreement classification by legislation will be necessary and the difficulty that in view of the possibility that this may be necessary it will be difficult to dispense with legislation as a preliminary to ratification will arise in its usual form. Such legislation might, of course, as suggested in connection with the last group of cases, simply confer power to make the necessary classification of persons by regulations if at any time collective agreements do not cover the ground satisfactorily.

Type five: Provisions specifying that there is no obligation to legislate where satisfactory compliance is secured by collective agreement

The fifth type consists of provisions specifying that there is no obligation to legislate where satisfactory compliance is secured by means of a collective agreement. As an illustration we may take Article 1 of the Weekly Rest (Commerce and Offices) Convention, 1957, which specifies that the provisions thereof "shall, in so far as they are not otherwise made effective by means of statutory wage-fixing machinery, collective agreements, arbitration awards or in such other manner consistent with national practice as may be appropriate under national conditions, be given effect by national laws or regulations". Such a provision not merely implies but states a contingent obligation to legislate if full compliance is not secured by collective agreement or in some other manner consistent with national practice.

Type six: Provisions authorising the competent authority to devolve certain functions upon the parties to collective agreements

A variant of this formula occurs in a sixth type of case in which a Convention requires the competent authority to discharge certain functions or main-

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tain certain services except in so far as effective provision is made by collective agreement. Thus the Food and Catering (Ship's Crews) Convention, 1946 provides (Article 2) that the competent authority shall be responsible for the framing and enforcement of food and catering regulations, the inspection of food and water supplies and catering arrangements, the certification of members of the catering department, and research into, and educational and propaganda work concerning, methods of ensuring proper food supply and catering service, "except in so far as these functions are adequately discharged in virtue of collective agreements".

Type seven: Promotional Conventions

In certain cases the obligation resulting from a Convention is an obligation to promote a defined objective rather than an obligation to maintain a defined standard. In such cases the nature of the obligation may permit of its being fulfilled, in whole or in part, by means of collective agreements which are unsupported, in respect of persons or matters within their scope, by legal regulation. As an illustration we may take the Equal Remuneration Convention, 1951, which provides (Article 2 [1]) that "each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote, and in so far as is consistent with such methods, ensure, the application to all workers of the principle of equal remuneration for men and women workers for work of equal value"; it further specifies (Article 2 [2]) that "this principle may be applied by means of national laws or regulations, legally established or recognised machinery for wage determination, collective agreements between employers and workers, or a combination of these various means". A similar formula may be satisfactory in other cases in which the obligation resulting from the Convention is essentially promotional in character and does not involve compliance with a defined and uniform standard.

Type eight: Industrial Relations Conventions

Certain Conventions concerning industrial relations embody standards which may be regarded as being both so basic and so well established that no legislative implementation is required to secure their effective application in countries where they are fully accepted by the parties to industry. As an illustration we may take the Right to Organise and Collective Bargaining Convention 1949 which provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (Article 1) and that "workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each

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other's agents or members in their establishment, functioning or administration" (Article 2), and gives illustrations of acts of discrimination and interference. It then provides that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise" as so defined (Article 3) and that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation" with a view to the regulation of terms and conditions of employment by means of collective agreements (Article 4).

Type nine: The Seattle Formula

When the Wages, Hours of Work and Manning (Sea) Convention, 1946 [subsequently revised by the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949], the Paid Vacations (Seafarers) Convention, 1946 [subsequently revised by the Paid Vacations (Seafarers) Convention (Revised), 1949] and the Social Security (Seafarers) Convention, 1946 were under consideration at the Copenhagen Preparatory Conference of 1945 and the Seattle Maritime Session of the International Labour Conference of 1946, it was desired to provide in more comprehensive terms for the application of their provisions by means of collective agreements.

At the Copenhagen Preparatory Conference it was envisaged that this might be done by introducing a new system based on the registration by certain Members of the Organization, in lieu of an instrument of ratification of the Convention, of a certificate of compliance with its provisions by voluntary collective agreement. This proposal, as tentatively drafted prior to the Copenhagen Preparatory Conference, was in the following terms:

> "70. A Member of the Organization should be entitled to deposit with the Director of the International Labour Office for registration by him a certificate of compliance by voluntary collective agreement with the requirements of the international instrument.
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> 71. The certificate should be in such form and contain such particulars as may be prescribed by the Governing Body of The International Labour Office.
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> 72. Before depositing a certificate the competent authority should satisfy itself that –
>
> (a) the matters dealt with in the instrument are the subject of a collective agreement (or agreements) between organizations which are stable and sufficiently representative of the shipowners and seafarers concerned;
>
> (b) every such agreement gives full effect to and does not include any provisions less favourable to the seafarers than the provisions of the instrument;

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(c) the agreement (or agreements taken together) applies to not less than four fifths of the total number of persons employed in vessels to which the instruments applies;

(d) every such agreement is expressed to continue in force for a period of not less than x years from the date of the certificate and provides for not less than y months' notice of termination by either party thereto.

73. A Member depositing a certificate should be required to notify the Director forthwith if –

(a) any agreement to which the certificate relates ceases in fact to be operative;

(b) the number of persons to whom the agreement (or agreements) applies falls below four fifths of the total number of persons employed in vessels to which the instrument applies;

and the registration should be amended or cancelled accordingly" [4]).

The Copenhagen Conference reduced the proportion of compliance required from four-fifths to three-quarters of the total number of persons employed and eliminated the requirement of a minimum number of years of validity of the agreement (but not the requirement of a minimum number of months for notice of termination). With this modification, it gave a general welcome to the proposals in the following provisional terms:

"The Committee recognised that these proposals have farreaching implications which go beyond the competence of the Maritime Preparatory Technical Conference, and that their details will require further study, but so far as maritime questions are concerned it regards them as a valuable contribution towards meeting the desire expressed by the Joint Maritime Commission that provision should be made for the possibility of giving effect to Conventions by means of collective agreements. It would accordingly welcome the inclusion of provisions based on the general principles of these proposals in those of the texts to be submitted to the maritime session of the International Labour Conference, in the case of which such inclusion would appear to be appropriate.

The Committee discussed a number of further questions which will require fuller consideration in the framing of definite proposals on the subject.

It agreed that it is desirable to make provision for annual reports on the action taken to give effect to Conventions by means of collective agreements; a suggestion that such reports should include any comments which may be submitted through the Government by shipowners' and seafarers' organizations received wide support.

It was agreed that some provision must be made for the procedure to be followed if it should be alleged that the provisions of a Convention were not being applied in a country which had deposited a certificate of compliance. It was suggested that in such cases the Governing Body should be empowered to arrange for such examination of the facts as might in the circumstances of

[4]) International Labour Conference, 28th Session, 1946, Report IX, Wages; Hours; Manning, p. 12–13.

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the case be advisable and practicable and to issue such reports on the subject as it might deem appropriate.

The Committee considered the effect of the cancellation of the registration of a certificate of compliance on the position of other Governments having ratified or deposited a certificate. It was suggested that such cancellation should entitle any Government having ratified or deposited a certificate to request the Governing Body to convene a Conference to consider the position and the action to be taken. A further suggestion was made that Governments ratifying or depositing a certificate should agree to participate in such consultations.

It was understood that the Office would give special consideration to the possibility of Governments ratifying in respect of certain provisions of a Convention and depositing a certificate of compliance in respect of other provisions.

The Committee agreed that the procedure of registering certificates of compliance might be applicable in appropriate cases in respect of Recommendations as well as in respect of Conventions.

Suggestions were made during the discussion that Governments should take steps to see that collective agreements were carried out, if necessary by making them enforceable by civil proceedings, and that Governments should use their good offices to assist in the maintenance of the required standards. These suggestions met with opposition and were left over for further study" [5]).

The matter then received further consideration and in the light of this further consideration the International Labour Office submitted to the Maritime Session of the International Labour Conference at Seattle an amended proposal which it explained in the following terms:

"No text was adopted at Copenhagen to permit States to give effect to the proposed Convention by means of collective agreements. It was agreed that whatever provisions might ultimately be adopted in the light of the Report of the General Purposes Committee should be inserted in the proposed text. The General Purposes Committee, however, did not propose any definite text; it merely discussed the conditions that should be fulfilled by collective agreements if used as a basis for ratification, and went on to state that ‚these proposals have farreaching implications which go beyond the competence of the Maritime Preparatory Conference'.

The draft text submitted to the Copenhagen Conference envisaged a system of certification of compliance with the Convention by means of collective agreements, and it was this system that was discussed at the Conference. The debate served a useful purpose in bringing to light some of the implications and dangers of the proposed scheme which had not at first been fully realised. The fundamental defect of the suggested innovation was that it would have resulted in inequality of obligations: States which ratified in the ordinary way would have

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[5]) International Labour Organisation, Maritime Preparatory Conference, Copenhagen 1945, Document MPC/11, Third Report of the General Purposes Committee.

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been bound to apply the Convention strictly in all its details by means of law or regulations, while other States would simply certify that the collective agreements in force in their countries were in full agreement with the Convention and covered a certain proportion (three fourths was suggested at Copenhagen) of the persons falling within its scope. A further weakness was that States submitting certificates of compliance would, in effect, be issuing certificates to themselves – a practice that would not necessarily inspire confidence in other States.

The Copenhagen Committee, in listing the conditions to be fulfilled, eliminated the clause in the preliminary draft which required States to certify that the collective agreements in question were ‚expressed to continue in force for a period of not less than x years'. This would have done violence to the principle of freedom of collective bargaining under which the parties can at any time review their agreements or negotiate fresh ones. If a State had to certify that an agreement was to remain in force for a specified number of years, it would in fact be legislating and the collective agreement would lose its essential character. On the other hand, in the absence of any safeguard as to the duration of agreements, it might well happen that a State could deposit a certificate of compliance, only to find a few months later that certain agreements had been changed and no longer fulfilled the provisions of the Convention. This would mean further inequality, since States which ratify in the normal way are bound for a period of years and must give a year's notice of denunciation of their ratification.

In view of these considerations it is suggested that the system of certificates of compliance tentatively put forward at Copenhagen should be the subject of further examination and that it would perhaps be unwise to incorporate it in any of the decisions taken at the Seattle Conference until its possibilities and implications have been more fully explored. Certain of the matters to be dealt with at the Seattle Conference are, however, matters which in some countries are dealt with by collective agreements rather than by legislation, and it would seem that some provision should therefore be made whereby account can be taken of this situation. It is suggested that the Conference might therefore consider a somewhat simpler approach to the problem, on the following lines, which are suggested by actual experience as regards certain of the maritime Conventions already adopted by the International Labour Conference. An examination of that experience goes to show that, at all events on certain maritime questions, a solution is not to be found by a provision that collective agreements can only be taken into account if they give full effect to the provisions of the Convention in the sense of corresponding to them in every detail. In the case of the Hours Convention adopted in 1936, as regards one important maritime country it has been pointed out that, although conditions correspond with those laid down in the Convention almost completely, there are a certain number of provisions in the Convention the subject matter of which has been

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dealt with by collective agreements in a somewhat different way from that envisaged by the Convention. It is claimed that the conditions afforded by those collective agreements, although they differ from the specific provisions in the Convention, are as a matter of substance not below the conditions so specified, but on the whole better. Nevertheless, the country in question has found itself unable to ratify the Convention. There can be no guarantee that similar situations may not arise in the future and it is for this problem, at all events so far as maritime Conventions are concerned, that it would seem to be very desirable to find a solution.

It was indeed this precise difficulty which was at the origin of the discussions which took place in the Joint Maritime Commission and in the Subcommittee of the Joint Maritime Commission on the question of the possibility of allowing effect to be given to the provisions of international Conventions by way of collective agreements. It was then pointed out that there was no inherent difficulty in the way of the adoption of such a procedure, but it was made clear what some of the implications of the adoption of such a procedure would be. On the one hand, the general view of Governments, Employers and Workers in the Conference may be that on a given question it is desirable that the obligations laid by a Convention on ratifying States should be identical and that those obligations should be defined in considerable detail. On the other hand, the general view of the Conference may be that a substantial equivalence of conditions is all that is necessary or possible. If the first view is taken, it is difficult to see how recourse can be had to collective agreements, which by their nature are the result of negotiation, the precise results of which cannot be laid down in advance, and which moreover are open to adjustment and modification whenever the parties to them agree to a change. If the second view is taken, collective agreements can be taken into account, but it must be clearly understood that the result will be to secure a certain equivalence of conditions and not to lay down a network of rigid detailed international obligations. It should be remembered that there is no particular virtue in one or other system. The object of the International Labour Organisation is not to secure the adoption of Conventions of any particular kind. The adoption of a Convention is simply a means to promote the improvement of conditions of labour, and, in deciding on the nature of the obligations to which the Convention gives rise, the test should be, not the degree of identity of obligation which the Convention may provide, but whether one or other form of Convention is more likely to result in positive progress. If this principle is borne in mind and regard is had to the experience of certain of the maritime Conventions previously adopted and the difficulties which have been encountered in their ratification, it would seem that here are strong reasons for examining the possibility of adopting on the present occasion, at all events as regards certain subjects, a Convention which, instead of attempting to provide for detailed identical obligations, would allow for a certain amount of elasticity so as to leave freedom for the working of the collective agreement system.

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It is with these considerations in mind that an alternative text is suggested in the present Report for the consideration of the Conference. The suggested text does not in any way interfere with the standard procedure. States will continue to ratify the Convention in the usual manner and will then be bound by its provisions; but if the new clause is adopted, a Government which ratifies may give effect to certain provisions of the Convention e i t h e r by legislative action o r by satisfying itself that the collective agreements in force in the country provide conditions which are substantially equal to or better than those laid down in the Convention. It will be for the Conference to consider, if it decides to adopt some such text, which provisions may be put into effect by collective agreements and which m u s t be applied by laws or regulations. Although the proposed clause would apply only to certain articles of the Convention, it is thought that the system now suggested would give greater flexibility, as it would enable countries in which the national practice is for certain matters – for example, wages – to be dealt with by collective agreement rather than by legislation, to ratify the Convention on that basis. It is hoped that this method will facilitate ratification by certain federal States, which have in the past been unable to ratify certain Conventions because the matter dealt with did not lie within their legislative competence.

The question of course arises as to how it could be determined whether the conditions provided by collective agreements were substantially equivalent to the provisions of the Convention or not. The proposal now put forward provides for a procedure whereby this equivalence can be examined.

Just as States which ratify in the normal way are required to submit annual reports which are scrutinised by a Committee of Experts, so, under the new proposed scheme, Governments will be required to give particulars of the collective agreements which give effect to the Convention. The examination by the Committee of Experts, which is charged with the duty of verifying the application of all international labour Conventions, is however restricted to an examination of whether or not the provisions of a given Convention have in fact been carried out. If the Convention is of an elastic character and provides that effect may be given to certain provisions of collective agreements and that no rigid conformity with the details of certain provisions of the Convention is required, it will not be sufficient simply to record that collective agreements exist. It will be necessary, if the system is to work effectively, that there should be an appreciation of the degree to which the equivalence provided by the collective agreements effectively exists. Such an appreciation would involve full technical knowledge of the conditions of work of seamen, and it would appear that the persons best qualified and indeed entitled to pass judgment whether such equivalence has in fact been secured would be the representatives of the Governments, the Shipowners and the Seafarers of the countries which have ratified the Convention. It is therefore proposed that the Convention should provide that a special tripartite committee of this kind might meet annually, or even at more frequent intervals, in order to consider a summary of the

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information received from Governments on the application of the Convention by means of collective agreements" [6]).

Provisions based on this proposal were included in the Wages, Hours of Work and Manning (Sea) Convention, 1946 and the Paid Vacations (Seafarers) Convention, 1946 in general terms applicable, with an exception in respect of machinery for examining complaints concerning manning, to all of the provisions of those Conventions; a similar provision, limited to the application of a particular paragraph relating to the continued payment of wages to sick and injured seamen was also included in the Social Security (Seafarers) Convention, 1946. The relevant article of the Wages, Hours of Work and Manning (Sea) Convention, 1946 (Article 21) was in the following terms:

"1. Effect may be given to this Convention by (a) laws or regulations; (b) collective agreements between shipowners and seafarers (except as regards paragraph 2 of Article 20); or (c) a combination of laws or regulations and collective agreements between shipowners and seafarers. Except as may be otherwise provided herein, the provisions of this Convention shall be made applicable to every vessel registered in the territory of the ratifying Member and to every person engaged on any such vessel.

2. Where effect has been given to any provision of this Convention by a collective agreement in pursuance of paragraph 1 of this Article, then notwithstanding anything contained in Article 9 of this Convention the Member shall not be required to take any measures in pursuance of Article 9 of this Convention in respect of the provisions of the Convention to which effect has been so given by collective agreement.

3. Each Member ratifying this Convention shall supply to the Director of the International Labour Office information on the measures by which the Convention is applied, including particulars of any collective agreements in force which give effect to any of its provisions.

4. Each Member ratifying this Convention undertakes to take part, by means of a tripartite delegation, in any Committee representative of Governments and shipowners' and seafarers' organisations, and including in an advisory capacity representatives of the Joint Maritime Commission of the International Labour Office, which may be set up for the purpose of examining the measures taken to give effect to the Convention.

5. The Director shall lay before the said Committee a summary of the information received by him under paragraph 3 above.

6. The Committee shall consider whether the collective agreements reported to it give full effect to the provisions of the Convention. Each member ratifying the Convention undertakes to give consideration to any observations or sug-

[6]) International Labour Conference, 28th Session, 1946, Report IX, Wages; Hours; Manning, p. 71–75.

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gestions concerning the application of the Convention made by the Committee, and further undertakes to bring to the notice of the organisations of shipowners and of seafarers who are parties to any of the collective agreements mentioned in paragraph 1 any observations or suggestions of the aforesaid Committee concerning the degree to which such agreements give effect to the provisions of the Convention."

The Committee on Wages, Hours and Manning of the Seattle Conference commented on these provisions in its report in the following terms:

"14. The discussion of the subject by the Committee revealed the wide differences in national conditions which had to be taken into account. In some countries the fact that a Convention has been ratified makes it the law of the land, and any collective agreement which failed to conform to the requirements of the Convention would be illegal. In these cases no difficulty arises. In other countries, existing legislation provides a means whereby collective agreements can be made legally binding on all employers and workers in the industry concerned, whether they are themselves parties to the agreements or not. In this case also no difficulty arises. The cases to which special consideration has to be given are those of countries in which the employers, the workers and the State, or any of these, regard voluntary collective agreements as the most satisfactory method of regulating conditions of employment and are not disposed to alter their policy and practice and resort to regulation by the method of legislation or compulsory application of agreements. Unless the Convention included provisions to meet such cases, ratification by the Members in this category could not be hoped for.

15. It was made abundantly clear by the course of the discussion that provision would have to be included in the Convention to provide for its application by collective agreements if the desired ratifications were to be secured. The United Kingdom Government member pointed out that the absence of such provisions in past Conventions had prevented the ratification of them by his country, even though the conditions secured by collective agreement were well up to, and indeed surpassed, the standards required. The United States Government member likewise declared that it was the policy of his country to favour free collective bargaining without governmental intervention and that agreements could not be given compulsory application to persons not parties to them. This is the position in the two countries with the largest tonnage of shipping, but it is not peculiar to them; it obtains also in other important maritime countries. It is well known that in the Scandinavian countries, for example, though hours of work of seafarers are regulated by legislation, the method of collective agreement is adopted for the regulation of wages. Among the Employers, the necessity for maintaining unimpaired and unimpeded by governmental intervention the longestablished and effective system of regulation of working conditions by voluntary agreement was expressed with particular emphasis by the United Kingdom member. On the Workers' side also it was clear that great

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value was attached to the maintenance of collective bargaining, and they raised no objection to the use of agreements as a method of application. Naturally, their spokesmen insisted that the protection of the Convention must be assured for all the workers within its scope, and some of them pointed to the value in this connection of the method of giving binding effect to agreements after they had been freely negotiated and concluded between representative organisations" [7]).

By a curious irony, of the nine Conventions adopted at Seattle, the only ones which had not come into force ten years later were the three Conventions containing these special provisions relating to their application by means of collective agreements. While this situation was due in part to difficulties arising out of the subject matter of these Conventions, it also tends to suggest that the Seattle formula does not completely resolve the difficulties which it was intended to overcome.

III. RECAPITULATION OF DIFFICULTIES

It is apparent from this analysis of the provisions relating to collective agreements contained in existing Conventions that the 1946 Conference Delegation on Constitutional Question was fully justified in taking the view that the issues involved are so complex in character as to call for further consideration.

It is sometimes said that it is for each State to decide upon its own responsibility whether it can venture to ratify upon the basis of arrangements other than legislation, and for each State which after so ratifying finds itself unable to apply to find means of giving effect to its international obligations. This however simply transfers the dilemma from the Organisation to the Members concerned. With a limited number of exceptions in respect of basic standards of industrial practice unlikely to be changed in any foreseeable circumstances, Governments which take a strict view of their own obligations will measure fully in advance the difficulties involved and are unlikely to ratify on this basis unless they have legislation, whereas Governments more given to bursts of enthusiasm may ratify and then be unable to apply.

The essential difficulties can be recapitulated in general terms as follows:

(1) The existence of "free" collective agreements does not give a Government any guarantee that it will remain in a position to fulfil its obligations during the full period of validity of a Convention.

(2) A Government cannot undertake to legislate at an unknown time in the future if legislation should become necessary by reason of the

7) International Labour Conference, 28th Session, Seattle, 1946, Record of Proceedings, 1946, p, 298–299.

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breakdown of agreements between employers and workers. To obtain legislation in such circumstances may be particularly difficult.

(3) Any legislation in advance for the purpose of providing against such a situation must involve some restriction of the flexibility of the collective agreement system.

(4) There will often be difficulties as regards scope and enforcement.

IV. SOME POSSIBLE SOLUTIONS

In these circumstances it may well be that the most constructive approach may be to consider a wide range of possible solutions of these various dilemmas no one of which can be of general application but which taken cumulatively may afford a series of variants appropriate to different cases which may arise.

There would appear to be a variety of such solutions which would be self-consistent and not inherently unworkable, though in most cases workable only in particular sets of circumstances. It will be convenient to divide the possible solutions into two groups, solutions which do not imply any modification in the main features of the existing system of Conventions, and solutions which do imply such modifications. Within each of these groups a number of possibilities will be indicated, and an attempt will be made to indicate some of the advantages and disadvantages of each of the possibilities suggested.

A.

Solutions which do not Imply any Modification in the Main Features of the Existing System of Conventions

Within this group of solutions a further distinction between two subgroups is necessary. Different considerations arise in respect of solutions which do not imply any modification in the main features of the system of "free" collective agreements and in respect of solutions which do imply such a modification.

Solutions which do not Imply any Modification in the Main Features of the System of "Free" Collective Agreements

The solutions coming within this sub-group naturally only give a very partial recognition to collective agreements. They amount to nothing more than a slight development of some of the types of provision referring to collective agreements included in existing Conventions. None of them neces-

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sarily involves interference by the State with the functioning of collective agreements as such, though in practice the first two will probably result in collective agreements functioning against a background of legislative provisions which will come automatically into operation in the event of the breakdown of the collective agreements.

Solution 1 – Further Development of Provisions Permitting Exceptions by Collective Agreement

It would be possible to include more frequently in future Conventions provisions whereby advantage may be taken of permitted exceptions by collective agreement. Any State so desiring would remain at liberty to add a municipal requirement that such agreements must receive the approval of a public body, but so far as the Convention was concerned such approval would not be necessary and in other States derogations from the provisions of the Convention could be effected by collective agreement without any State intervention. There are, however, two limitations to this line of approach. In the first place it does not avoid the necessity for legislation on matters of principle. If the only recognition given to collective agreements is that recourse may be had to permitted exceptions in virtue of such agreements there is the same degree of necessity for legislation on matters of principle as there would be in the absence of any such recognition. In the second place, if legislation is confined to matters of principle and there is no power under the legislation to make exceptions by regulation, provision for exceptions being confined entirely to collective agreements, the employer cannot take advantage of any exceptions unless he can reach an agreement with the workers. The leverage given to the workers is thus immense, particularly as legislation to permit exceptions may be almost as difficult to secure after the breakdown of a collective agreement as legislation to secure enforcement will often be in such circumstances. In these circumstances it seems probable that any such proposal would be received with great reserve by both employers and governments. This does not imply that there would necessarily be any serious objection to the inclusion in Conventions of a formula under which farreaching exceptions may be made by national laws or regulations or by collective agreement, but it does imply that when matters come to the stage of national legislation there will be strong pressure for the inclusion in such legislation of at least a residuary power to grant exceptions by regulation in default of collective agreement. The practical effect of a further development of provisions allowing exceptions to be made by collective agreement is therefore likely to be limited, but such a development would have some effect in that it would tend to encourage the inclusion in legis-

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lation of provisions under which collective agreements were recognised as the normal method of regulating recourse to exceptions.

Solution 2 – Further Development of Provisions for More Detailed Definition of Standards by Collective Agreement

Some further development of provisions whereby the more detailed definition of standards is left in the alternative to national laws or regulations or to collective agreement is also possible. In a sense the problem here is a small-scale but faithful reproduction of that which arises if it is proposed to include a clause whereby all the obligations resulting from a Convention may be performed at the discretion of the Member either via legislation or via collective agreements. In practice however the smaller scale of the problem almost alters its nature. As legislation will in any case be required to give effect to the Convention it will not be difficult to include in such legislation a provision empowering some appropriate body to undertake the necessary further definition of standards in any case in which no collective agreement is operative. It is, however, only by the inclusion of such a provision in the legislation by which effect is given to the Convention that satisfactory fulfilment of the obligations resulting from the Convention can be guaranteed. The footing of apparent equality upon which legislation and collective agreements are placed by some of the existing provisions may therefore be misleading. A formula requiring legislation embodying the necessary further definition of standards or at least establishing a procedure for such further definition by a public body, but permitting the operation of such legislation to remain in suspense while satisfactory collective agreements are in force, would probably state more accurately the practical effect of such provisions. A slight variation upon this would be a formula whereby the further definition of standards was primarily a matter for collective agreements but requiring the existence of legislation establishing a procedure for such definition by a public body whenever collective agreements do not satisfactorily cover the ground. The range of questions of detail which could be left to be determined under such formulae is considerable, but not indefinite, for every time a question is left to be so determined a certain degree of international uniformity is sacrificed.

Solution 3 – Further Development of Provisions Leaving Questions of Classification to Collective Agreements

Some further development of provisions leaving questions of classification to collective agreements may be useful in appropriate cases, but any such development is clearly without relevance to questions of major importance.

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The necessity for having in reserve special legislation on the question of classification which will operate in default of collective agreements can be avoided if the Convention is so expressed that if there is neither legislation nor a collective agreement persons clearly fall into one category, the possible effect of a collective agreement, as of legislation, being simply to transfer them from the category into which they would otherwise fall into another category.

Solutions which do Imply a Modification in the Main Features of the System of "Free" Collective Agreements

The type of solution now to be discussed would make it possible to assign to collective agreements a much larger role in connection with the application of Conventions than the very limited solutions reviewed above. The objection to it is that, since it would denature collective agreements and deprive them of the flexibility which is their essential justification, it has little chance of general acceptance. It implies acceptance of two principles incompatible with "free" collective agreements as generally understood, that of the coercion of minorities and that of the validity of agreements for relatively long periods, and, while both of these principles are now widely accepted in many countries [8]), they are exceptional rather than normal in some of the countries where the greatest interest has been shown in the possibility of ratifying and applying Conventions on the basis of collective agreements.

Solution 4 – Inclusion in Conventions of a Provision referring to Agreements made legally binding upon Minorities and for a Relatively Long Period

It has already been emphasised that if a collective agreement is to be a satisfactory basis for the guaranteed enforcement of a Convention over a period of years there must be power to extend its provisions to minorities and arrangements under which its main relevant provisions are binding for a relatively long period. The first of these aspects of the question requires no further discussion. In connection with the second it is worth noting that it would not be necessary that all the provisions of a particular agreement should be binding for the duration of the Convention. A certain degree of scope could be left for future adjustments, but it would be necessary that the content of agreements should only be subject to change within a framework imposed by the Convention. The possible formulae for achieving this result are various. Assuming that there was general legislation under which certain agreements could be made binding upon minorities and for extended periods,

[8]) Cf. Jenks, The International Protection of Trade Union Freedom, 1957, p. 339–358.

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such legislation might provide that such agreements should specify certain provisions which would remain binding independently of the fate of the agreement as a whole, or that certain provisions should only be terminable on approval by the competent authority (which would not necessarily be the authority which normally made agreements binding) of some subsequent agreement regarded by it as fulfilling the requirements of the Convention. Assuming that there was special legislation relating to the collective agreements by which effect was to be given to the provisions of a particular Convention the appropriate formula would naturally be slightly different. The legislation might require that agreements should include certain provisions (which would be tantamount to giving those provisions the force of ordinary legislation) or might require that certain provisions should be approved before they were made binding by an authority capable of appreciating whether they would give effect to the provisions of the Convention and should remain binding until superseded by provisions approved in like manner. How much flexibility could be secured by these devices it is impossible to predict in the abstract. Only upon the basis of detailed proposals intended for inclusion in a particular Convention could any reasoned estimate be formed, and only actual experience of experiment with these possibilities could give any really reliable indications. So far as the guaranteed enforcement of Conventions is concerned, such a solution would be satisfactory, but it would be regarded by many of those who attach importance to the maintenance of free collective agreements as involving an undesirable degree of governmental intervention in the operation of such agreements.

Solution 5 – Further Promotional Conventions

If further Coventions which are essentially promotional in character should be adopted, one can conceive of the inclusion therein of provisions analogous to those of the Equal Remuneration Convention recognising that their purpose may be promoted by means of collective agreements no less effectively than by means of laws and regulations.

B.

Solutions which Imply Modifications in the Main Features of the Existing System of Conventions

The solutions now to be discussed imply substantial changes in the existing system of Conventions. They may be divided into solutions envisaging the implementation of Conventions of a modified character by collective agreements and solutions based on the idea of international collective agreements.

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Solutions under which Conventions of a Modified Character are to be implemented by Collective Agreements

These solutions involve a weakening of the Convention system for the purpose of facilitating ratifications based solely on collective agreements of a voluntary and flexible character.

Solution 6 – Conventions requiring only a stated percentage of compliance

Theoretically, existing international labour Conventions require 100 per cent. degree of compliance with their provisions. Doubtless this degree of compliance represents an ideal standard and even good standards of practice may fall somewhat short of this ideal, but legislation giving effect to a Convention is not regarded as satisfactory unless it applies to all persons to whom the Convention applies and makes some provision for penalties in cases where its requirements are honoured in the breach rather than in the observance. In the case of collective agreements there is added to the possible percentage of non-application resulting from failure to respect their provisions a possible further percentage resulting from the fact that their provisions may not apply, and unless there is power to make them binding upon minorities probably will not apply, to all persons covered by the Convention. If it is thought unnecessary that certain Conventions should continue to require at least a theoretical 100 per cent. compliance, a clause allowing a certain tolerance could be included in their terms. In practice it would doubtless be necessary to draft such a clause in such a way that the tolerance was granted to Members implementing the Convention by legislation, as well as to Members relying upon collective agreements for its application, but the effect of such a clause (which would not necessarily refer explicitly to collective agreements) would be to remove difficulties arising from the existence of small minorities which a Member is unwilling to coerce. The percentage of compliance to be regarded as satisfactory would probably require reconsideration by technical experts in each case and it may well be that in some cases to assess the degree of compliance as a percentage would be difficult. International supervision may also be made more difficult if such a tolerance is allowed and would be made almost impossible unless Members were required to indicate at the time of ratification what they proposed to exempt from the Convention in virtue of the tolerance. Failing this the existence of the tolerance might facilitate a host of minor evasions far exceeding in their cumulative effect the permitted percentage of exceptions, and except in very glaring cases would give Members an apparent answer to any criticism of failure to comply with the requirements of the Convention the value of which it would be difficult to assess. Nor is the above an exhaustive account

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of the disadvantages and limitations of such a solution. It would reduce the difficulty of obtaining conformity in scope between Conventions and collective agreements, but would leave unsolved the difficulties arising from the normally short period of validity of collective agreements. To meet both difficulties some combination of this solution with solution 7 would be necessary.

Solution 7 – Conventions subject to denunciation at any time by a few months' notice

The time difficulty, unless solved by an extension of the period of validity of collective agreements, can only be solved, if at all, by a reduction in the period of validity of Conventions. Upon this subject it is useless to cherish illusions. A reduction of validity to a period of a few years would not suffice. It would probably be necessary that Conventions should be subject to denunciation at any time by a few months' notice. It may well be thought that the machinery by which Conventions are brought into being is too cumbersome to be utilisable for the conclusion of Conventions of this type. On the other hand, the disproportion between the cumbersomeness of the machinery and the precariousness of the result achieved can be exaggerated. The preliminary procedure might be simplified in cases in which the obligations proposed were subject to denunciation at short notice. The mere fact that Conventions were subject to denunciation at short notice would not necessarily result in their being frequently denounced. A substantial number of international labour Conventions have for many years been subject to denunciation at any moment but, except in connection with the ratification of revised Conventions, there has been only one denunciation [9]). Likewise almost all commercial treaties are subject to denunciation at very short notice, but commercial treaties are nevertheless an essential part of the world's political-economic structure and often remain in force for long periods. It may be that multipartite Conventions relating to certain aspects of social policy, like commercial treaties (which, prior to the negotiation of G.A.T.T., were normally bipartite instruments) will most easily gain acceptance if subject to denunciation at any time and will, though always of precarious validity, in fact promote an appreciable degree of international uniformity and stability. Provision could be included in such Conventions for further exploration of the position at a tripartite conference of parties to the Convention immediately upon any denunciation occurring, and it could be provided that the Member denouncing would not thereby release

9) Cf. The International Labour Code, 1953, Vol. I, p. 43–45.

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itself from its obligation to attend such a conference. If the first few conferences of this type were successful in securing agreement upon some new arrangement, it might become difficult for any Member to adopt an intransigent attitude at future conferences, but if an early conference broke down after denunciation by a State of industrial importance, the whole Convention might very well collapse. It is a matter for consideration whether, in a Convention intended to be so flexible as not to require any legislation, it would be proper to express the obligation assume by ratification as an undertaking that the standard provided for in the Convention will be applied. It would be much more in the nature of a solemn assurance that it is for the time being applied. Such an assurance could only be given even for a period of months if the relevant collective agreements included provisions whereby they were only subject to denunciation on so many months' notice. There may also be doubt as to whether the non-existence of a state of fact which a Member solemnly assures other Members exists is a failure to ensure the effective observance of the provisions of a Convention within the meaning of the Constitution of the Organisation. A solemn assurance that a state of fact exists is clearly distinct from an undertaking that it shall exist. In short, the only real obligation imposed by such a Convention would be that of attending an immediate conference if any parties of the Convention departed from the policy which the parties assured each other they were following in common.

It is apparent that changes of so far-reaching a character in the nature of Conventions would be unlikely to be acceptable in respect of Conventions establishing longterm international standards which would normally be implemented by national legislation of a permanent character. One cannot, for instance, conceive of such fundamental instruments as the Freedom of Association and Protection of the Right to Organise Convention, 1948 or the Abolition of Forced Labour Convention, 1957, or of any comparable instruments adopted in the future, being cast in the form of what would be essentially a *modus vivendi* coupled with an obligation for continuing mutual consultation.

Solutions based on the Idea of International Collective Agreements

It remains to consider solutions based on the idea of evolving a system of international collective agreements complementary to the existing system of international Conventions.

One can of course conceive of the machinery of the International Labour Organisation being used for the negotiation of international collective agreements of a voluntary type which would have no formal relationship to any

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international Convention. The only formal step required to initiate such action would be a conference resolution asking the Governing Body to invite representatives of the employers' and workers' organisations in a certain industry to attend a conference for the consideration of an agreement. At such a conference governments would not necessarily be represented as such, though some Members of the Governing Body would doubtless be present as part of a Governing Body delegation. The agreements emerging from such a conference would have no special legal status, but in well-organised industries might become, in practice, widely operative standards. The parties to such an agreement might agree by its terms to meet at a new conference at short notice in the event of the denunciation of the agreement. Such an agreement would have no special sanctions, and there would be no means of enforcing even the obligation to attend a new meeting. It might be none the less of considerable practical value.

Something of this kind was clearly envisaged when the Industrial Committees of the International Labour Organisation were originally established in 1945. The expectations of that time were outlined as follows in the report submitted to the Philadelphia Session of the International Labour Conference by the International Labour Office in 1944 while the proposal to establish the Committees was pending before the Governing Body:

> "The functions of the committees must clearly include the formulation of proposals concerning the regulation of wages, conditions of employment and welfare arrangements in the industry. In some cases effect would no doubt be given to such proposals by the adoption of international labour Conventions through the ordinary machinery of the International Labour Conference or by the conclusion of special agreements between Governments by some other procedure developed under the auspices of the Organisation, but it is reasonable to hope that the committees might also, as the British proposal contemplates, evolve into or sponsor the development of machinery for the negotiation between representatives of employers and workers of agreements of an international character not less effective than national collective agreements. In order to permit of the effective discharge of these functions the committees ought, it would seem, following the precedent of the 1937 Textile Conference, to keep under constant review all the economic factors which constitute the background of the social conditions of their respective industries. The collection, analysis and distribution of information on the supply of and demand for the raw materials and products of the industries concerned, on the ways in which the production and consumption of these products may be increased, and on all measures calculated to promote the prosperity of the industry and the well-being of those engaged therein, would therefore appear to be desirable in order to ensure the availability of an adequate foundation of relevant infor-

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mation as a basis for the work of the committees. The committees would also constitute a means of securing closer contact between their respective industries and the International Labour Organisation and through it with other international bodies, and it might be possible for them or for the staffs so attached to them to furnish technical and secretarial assistance and possibly other facilities in connection with international negotiations designed to promote international trade in the products of the various industries. The exact range of the functions to be discharged by a committee would be a matter for agreement with the parties concerned, and though all of the committees would no doubt approximate to a common pattern to a greater or lesser extent, adaptation to the differing requirements of different industries would be essential and any attempt to secure a symmetrical uniformity would be as inappropriate in respect of functions as in respect of structure. In some cases broader functions might be entrusted to the committees. It would, for instance, be undesirable to exclude *a priori* the possibility that certain of the committees might progressively, in cases which the interested parties thought such developments appropriate, play an increasingly responsible part in the international organisation of social and economic measures designed to secure stable prosperity and reasonable social standards in the industry concerned. The extent to which such developments may be desirable or undesirable will depend in part on the general policies adopted in regard to commodity control arrangements and international industrial agreements and on the nature of the relationships established between the proposed industrial committees and any other international bodies which may be set up to deal with these subjects.

The powers to be entrusted to the committees would necessarily depend in large measure on the range of their functions and might vary with these from one committee to another. In the first instance, no doubt, the only function of the committees would be to advise the Governing Body, and the British proposal does not appear to go beyond this. In certain cases experience might show it to be desirable to arrange for further powers. It might, for instance, be possible to build up national committees with which the international committees would co-operate and to which they might in certain circumstances make proposals for action directly. All these are matters to be worked out in the light of the requirements of each particular industry and the views of the parties concerned" [10]).

Such arrangements would be complementary to but independent of the system of international labour Conventions. One can, however, also conceive of various ways in which the provisions of such international collective agreements and the provisions of international labour Conventions might interlock with each other.

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[10]) International Labour Conference, 26th Session, Report I, Future Policy, Programme, Status of the I. L. O., p. 75–77.

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Solution 8 – Conventions requiring International Collective Agreements to be made binding on Minorities by National Legislation for the Period of their International Validity

It is for instance conceivable that the conclusion in certain highly organised industries of international collective agreements between international federations of employers' and workers' organisations might be facilitated by the existence of a general international labour Convention, the parties to which would undertake to make binding upon minorities international collective agreements concluded in some approved way. There are, of course, formidable difficulties. Who is to determine the national organisations competent, by participating in a federation which becomes a party to an international collective agreement, to bring into being an agreement which Members would be under an obligation to make binding upon minorities? What are the procedural requirements to be followed by international federations, and to what extent are they to have power to bind minorities within their ranks? What is to be the status of any international collective agreements concluded between the international federations subject to the dissent of employers' or/and workers' organisations in one or more States? What is to be the procedure for the termination of such an agreement, and more particularly may notice of termination be given only by one of the international federations (and if so, acting by what procedure and what kind of vote) or will the national sections of international federations be entitled to give notice? If Members were to undertake in advance any obligation to make the provisions of an international collective agreement binding upon minorities, the Convention by which they accepted such an obligation would have to contain clear provisions on these matters. It may well be that the matter is too difficult for a general Convention to be possible within any measurable future, but that problems of this kind would not be completely insoluble if considered in relation to the facts of a particular industry.

Solution 9 – Conventions requiring International Collective Agreements to be made binding by National Legislation upon the Parties to them

It may be possible to make some progress in the direction of giving a certain legal value to international collective agreements without going the length of an international obligation to make agreements concluded in some approved manner binding upon national minorities. A Convention might require such agreements to be binding upon the parties to them until denounced in the manner provided thereby, and might prohibit any derogation from their terms by private contract between persons covered by them.

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It may be possible to conceive of a regional Convention of this type giving some redress in the municipal courts of the country where an agreement was violated during its currency to interested parties in other countries, either in the form of injunction proceedings or in the form of proceedings for damages (on the assumption that such damage could be readily ascertained). Alternatively a Convention on these lines could provide for either a tripartite conference or a conference of employers and employed, which all parties would be pledged to attend, immediately on any denunciation of the agreement, or to consider any allegation of its inadequate enforcement. The type of international collective agreement contemplated by this solution might be either an agreement between international federations, or an agreement between the parties to various national agreements to maintain a certain stability in their national agreements.

V. GENERAL CONCLUSION

This necessarily incomplete survey of various possible lines of approach to the problem tends to confirm the finding of the Conference Delegation on Constitutional Questions in 1946 that the whole problem continues to call for much fuller study. It represents a major challenge to the constructive ingenuity of both international and industrial lawyers.

The only general conclusion which it appears possible to draw from our analysis at this stage is that it would seem to be a mistake to try to direct the consideration of the problem towards any one determinate solution. No such solution appears to be in view. It would seem preferable to approach in an experimental temper the various cases which may arise as they arise. One can conceive that, as the years go by, a wider practical experience will be secured by the experimental application in appropriate cases of most or all of the different devices which have been reviewed. International labour Conventions, as evolved by the International Labour Organisation, are less than 40 years old. We must not assume that their present form has reached any finality or that there will necessarily be as much uniformity in the form of future Conventions as was traditional in the early years of the Organisation. Experiment tempered by prudence (and, one may hope, a strong dose of common sense) will continue to have an important part to play in adapting the form of future Conventions to changing needs. It may well be that in this process fuller provision can and will be made, in widely varying ways, for the application of Conventions by means of collective agreements.

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