INTERNATIONAL LABOUR OFFICE

INTERNATIONAL LABOUR REVIEW

VOL. I. No. 3

MARCH 1921

GENEVA
1921

CONTENTS

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International Labour Law

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IT is no longer necessary to demonstrate the fact that international labour law can exist. The day has gone by when conservative jurists rejoiced in the failure of the Berlin Conference of 1890 and hoped that things would remain " as they were ". Thanks to the Labour Organization of the League of Nations, international labour law is now in full course of development.

In order to understand the future possibilities and scope of this new branch of legislation, it is necessary to determine its sphere with exactness. I have already given a definition of the term "international labour law" : *that part of international law which regulates the mutual relations of States as touching those of their nationals who are workers* (1). The term, as should be clearly understood from the outset, is used to mean not only the law of nations, but also includes private international law. It is generally agreed that labour conventions—whether conventions of several contracting parties, such as the Berne Conventions of 1906, or those between two contracting parties, such as the Franco-Italian Conventions of 30 September 1919—form a part of international law. But it would be a serious omission not to include also the whole subject of the conditions enjoyed, whether by foreign workers in the national territory of any State, whether by the nationals of that State working in foreign territory.

At first sight the questions involved might seem to be exclusively questions of internal legislation and internal right. Internal legislation, it is true, is here the deciding force, but every decision given does, in effect, apply the principles of international law. Just as questions of personal status, those relating to the marriage of foreigners, for example, form a

(1) See *Le Droit international ouvrier;* Paris, 1913, p. 23, by the author of this paper.

part of international private law, so in the same way do all questions relating to the legal position of foreign workers form part of international labour law.

It is the State in fact, which is here the acting party. It is not a matter of indifference to Italy whether, or not, her citizens are allowed to go to work in the United States; whether, or not, once they are admitted, they are treated on the same footing as citizens of that country. On the other hand, it is of the first importance in the mutual relations between States to know how far a State can exclude foreign workers. For underlying all these problems there is that fundamental problem, which is undoubtedly a problem of international law : the problem of the sovereignty of States and the problem of the community of States, and of the relation of the one principle to the other. Of course we are masters in our own house; but we are less and less so from the moment we begin to be members of a community of nations. Absolute isolation —the great wall of China—is the simple negation of international law.

Thus the range of international labour law is easily recognizable. In the first place it includes everything relating to the worker's right of settlement in a foreign country. This means that it includes the whole problem of emigration, in other words, of the admission of the foreign worker to the national territory of a State and of the protection extended by the State to its workers settled in foreign territory. Consequently, international labour law must deal with the position of the foreign worker in the country in which he has settled, and with the problem as to whether he shall enjoy the same privileges as the nationals of that country. This involves the question of the application to such foreign workers of factory laws, police regulations, laws on labour contracts, hours of work, hygiene, trade unions, strikes, etc., and also of social insurance legislation on accidents, health, invalidity, old age, and unemployment. The variety of principles adopted by different legislatures has brought a large crop of legal and administrative difficulties.

The chief province of international labour law, however, lies in the direction of labour conventions. These comprise treaties concluded by two States for the purpose of regulating questions involving the special interests of their own workers. Among the most recent conventions of this type are the Franco-Italian Treaty already mentioned, the Franco-Polish Treaty of 7 September 1920, and many conventions relating to social insurance. Then there are general labour treaties, such as the Berne Conventions concluded before the war, and the Washington and Genoa Conventions concluded after it.

The International Labour Conference, which formulates such Conventions year by year, constitutes, from the point of view of international law, an organization of an unprecedented kind. It is not an assembly of plenipotentiaries

authorized to sign on behalf of Governments, but a kind of international parliament, in which votes are individual, and in which a two-thirds majority binds the whole of the States which are members of the organization. The obligations undertaken by the members are, nevertheless, limited. They are merely bound to *submit* the draft conventions to their respective legislatures within the year. When these conventions have been ratified by such legislatures, they become conventions in the proper sense of the term, and a system of penalties guarantees their observation.

Three factors make this Conference of enormous importance from the point of view of international labour law: first of all its universal character, then its periodical repetition, and finally its constitution. The Conference includes all members of the League of Nations and even other States, for Germany is now admitted. Thus the primary condition of international labour legislation is realized : it must aim at universality, (always making due allowance for varying physical and economic conditions among the nations of the world), because it aims at securing to the whole of the labouring portion of mankind a certain minimum of rights.

Some consider the universal character of the Conference to be a source of weakness. They argue that the Conference will result in lowering States with an advanced labour legislation to the level of backward States. Such critics forget that the real source of legislative progress lies in each individual nation, and not in nations taken collectively; above all, they forget that it is a matter of first importance to all States, even to advanced States, that entirely backward States should not be allowed to exist ; solidarity is here the condition of future progress. However, the treaty in virtue of which the Conference was constituted does, as a matter of fact, take into account the different levels of legislation in different States and makes provision for the concluding of conventions among a limited number of members.

Another essential feature is the periodical character of the meetings held. The members are permanently in touch with one another and do not merely hold occasional meetings ; the work of the Conference is continuous, and work left undone on one occasion may be accomplished later ; bad work can be amended and improved. In any case, frequent contact between authorized representatives of States is in itself good, because it permits and defines, encourages and deepens, mutual understanding.

The constitution of the Conference increases its effective power. It is no mere concourse of Government delegates ; side by side with delegates from Governments, and in enjoyment of the same rights, sit delegates representative of employers' and workers' associations. There is a double advantage here ; firstly, divergent points of view can be

confronted one with the other; secondly, such collaboration as does take place gives weight to the decisions. Every authorized delegate is heard, and where agreement is reached, it is lasting.

This organization will create international labour law, and its future possibilities are infinite. The Conference began to lay the foundations of an international labour code at Washington, a code extending into many different spheres, the eight hours' day, unemployment, employment of women and children, industrial hygiene. At Genoa it attempted to codify the legislations of the world on behalf of a special class of workers, the seamen. It will proceed to deal with agricultural work at any early date and will begin to study the vast problem of social insurance. Within the space of two years a wide range of problems has been opened up; too wide, it may be said, to allow of parliaments keeping pace with the Conference. The delay in ratifying the Washington Conventions is a proof and a lesson.

International labour law is capable of including the whole sphere of legislation for the protection of the worker; that is the essential point. It is, in fact, nothing more than the spirit of that legislation extended into the international sphere. States have begun to realize their duties towards the worker; they conclude conventions in order to strengthen their national laws by a process of mutual support, of co-ordination, of agreement. Just as each nation attempts to guarantee to its citizens a minimum standard of living, a standard which shall remain unaffected by economic competition, so the final purpose of international labour law is to place beyond attack from international competition a minimum of conquests in the world of labour, such as shall constitute a human charter.