

## Juridical Consequences of the Decisions of the International Labour Conference

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Résumé de l'article

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# Juridical Consequences of the Decisions of the International Labour Conference

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The International Labour Conference is the annual meeting of the representatives of the member states of the International Labour Office, (I. L. O.). Each of these states delegates to it, or is supposed to delegate to it, four representatives of which two are government delegates, one employer and one worker, accompanied by technical advisors up to two for each delegate for each question on the agenda. Substitute delegates and technical advisors of which the number is left to the discretion of the government concerned, may also form part of the delegation. The Conference makes all the decisions which are required by the

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International Labour Office, which is not a labour union head-office, but an association of nations. The secretariat of the I.L.O. is the International Labour Office, placed under the care of a Director-General reporting to the Governing Body, which itself consists of thirty-two members, of which sixteen are government representatives, eight representatives of labour and eight representatives of management, chosen by a rather complicated but efficient method of election.

### THE INTERNATIONAL LABOUR ORGANIZATION

In the reports submitted by the Director-General at the thirty-fourth Session of the Conference, the aims of the International Labour Organization, which was founded at the time of the signing of the peace treaties which ended the first War, are outlined as follows:

#### The I.L.O. — its Aims and its Methods

The I.L.O. has been created immediately after a world disaster and in an atmosphere, not of peace, but of restlessness and tension. The I.L.O. has been created with the conviction that peace cannot be universal and durable unless it is based on social justice. The motto of the Organization says: *Si vis pacem cole justitiam* (If you want peace, cultivate justice).

When the Conference, in 1944, adopted the Philadelphia Resolutions, it was able to formulate certain principles, for example: "Poverty anywhere constitutes a danger to prosperity everywhere", but also stated its conviction that experience had fully demonstrated the truth of the statement in the Constitution of the Organization, that universal and lasting peace can only be based on social justice. The essential task of the Organization is the promotion of social justice all over the world.

All the activities of the Organization are inspired from this source. Work to have international labour conventions and recommendations adopted — this certainly contributes to the extension of social justice. Furnish governments with technical assistance — here again the aim is to contribute to the extension of social justice. The Labour supply problem, including migrations, professional training and employment service organization — these are all contributions to social justice. The information service by way of the various publications of the Office is a further contribution to the development of social justice.

If we analyse one after another the definite tasks of the Organization, whether it concerns the traditional work of adopting and

applying international labour conventions and recommendations, or if it is in the newer field of technical assistance and concrete action, we shall note that each one of these activities is essentially a contribution to social justice.

Our aim is social justice in the interest of world peace, and we can see more clearly than ever the urgent necessity to intensify and to extend every positive and concrete effort to eliminate poverty, misery and sickness wherever they exist and to raise the standard of living. This is the indispensable basis for a peaceful world, a world in which all men can live and work in free cooperation with each other.<sup>1</sup>

### Three Kinds of Decisions

This shows that the I.L.O.'s tasks are numerous. Their realization depends finally on the decisions of the annual conference, together with the decisions of special meetings held at irregular intervals. The decisions of the International Labour Conference take the form of either Resolutions, Conventions or Recommendations. From the juridical point of view, the resolutions adopted by the Conference are not much different from these resolutions adopted by any other international institutions; they are subject to the rules of law generally applied, such as the rule *pacta sunt servanda* (contracts must be respected). On the other hand, the recommendations and more particularly the conventions adopted by the Conference entail juridical consequences of a special nature because of the constitutional prescriptions of the I.L.O.'s Charter.<sup>2</sup>

### The Resolution

Let us note first of all that the Resolutions of the Conference represent decisions made by the ordinary majority of the delegates present, whereas the conventions and recommendations represent the decisions taken by a two-thirds majority of the delegates. This is important when we consider that the employers' representatives and those of the workers often take separate sides and vote in a block against each other, independently from the government delegates.

It is a peculiarity of the Constitution of the I.L.O. that it foresees the possibility of the members of the same delegation voting on opposite

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(1) International Labour Conference, Thirty-fourth session, Geneva, 1951, *Financial and Budget Questions*, Second question on agenda.

(2) Constitution and Regulations of the I.L.O., I.L.O., Geneva.

sides. Except in very exceptional cases, both government delegates will vote in the same way, whereas the other two, the employer and the worker, will often vote against each other, either with or against the representatives of the government of their country. The reason is that these latter two, although nominated by their governments, are nevertheless the respective representatives of the employers and workers of their country. Also, the government must, in accordance with the Constitution, designate the non-government delegates and technical advisers after agreement with the most representative professional organizations of employers and workers of the country concerned, with the reservation that such organizations be in existence.

It is clear that if the employers' and workers' delegates join together against the government representatives, the latter would not be able to obtain a two-thirds majority for the adoption of a convention or a recommendation. This situation does not happen, however, or at least it has not yet happened, for the good reason that the interests of the employers and the workers are most often divergent and, in the end, it is the majority vote of the governments which turns the scale. What are the obligations which follow the adoption by the Conference of a convention or recommendation? Let us reply at once that they are different according as the decision takes one form or the other.

### **The Recommendation**

In short, the Recommendation, as its name indicates, only recommends to Member States of the Organization, the application of certain principles in the question of social legislation. As soon as it is adopted, the recommendation is sent to all the States, who, when they become Members, undertake, *ipso facto*, to submit it to the competent authorities in order to make it into law or to take steps of another kind.

What procedures could be taken against the Member States who would not conform to the obligation of submitting the recommendation to the competent legislative authority? The constitution of the I. L. O. stipulates that in such a case, any other Member would have the right to refer it to the I.L.O. and it is established that if the State implicated has not undertaken the prescribed measures, it will depend on the I.L.O. through its annual Conference, to decree what steps should be taken.

### **The Convention**

If it is a Convention, on the other hand, the obligations of the Member States are the same as those already prescribed in regard to the

Recommendation; in addition, if the government obtains the consent of the competent authority to make it into law, it must advise the I.L.O. of its ratification, that is to say, its formal adhesion to the convention, which then takes on all the obligations of an international treaty and even more. Usually it is said that the convention is the law of the parties. Here, it implies something more, it carries all the related obligations derived from its status as Member of the Organization.

### **Conventions and Governments**

It is quite evident that if the Constitution of the I.L.O. imposes on the government the obligation to submit a convention to the legislative authority, the latter is not obliged to subscribe to it. Thus a country which does not have a merchant navy would not be obliged to conform to a convention which concerns a category of workers which does not exist for it. Other reasons could necessarily be invoked. Let us add that when a convention is not ratified, it does not entail any more obligation, juridically speaking, than a recommendation.

It may be that, on the other hand, a similar law to the convention is already in force, in such a case the adhesion does not present any difficulty; but it will entail, in addition to the obligations imposed by the law itself, those imposed by the Constitution of the I.L.O. for the application of conventions, hence juridical consequences, which in one way are distinct from the terms of the convention itself.

It is the juridical consequences, brought into existence by membership in the I.L.O., which in reality, distinguishes international labour conventions from other forms of international agreements. One of the main consequences of the adhesion of a Member State to a convention consists in the obligation of the latter to present each year to the I.L.O. a report on the measures taken by it to carry out any convention to which it has adhered. The report must be written in the form prescribed by the I.L.O. and furnish the details required by it.

### **Rôle of Public Opinion**

The Member State must also send a copy of this same report to the employers' and employees' organizations, the most representative ones that have been consulted, as we have seen, in designating the delegates. These professional organizations are authorized to send the I.L.O. protests against the government when they have reason to believe that the latter has not carried out in a satisfactory manner, the convention

to which it has adhered. The government so accused, may be invited by the I.L.O. to make such a declaration on the question as it may see fit. If no declaration is received, within a reasonable time from the government involved, or if the declaration received is not satisfactory, the I.L.O. has the right to render public the protest of the professional organizations and, should the occasion arise, the reply made by the government. From this point, public opinion, not only in the country directly concerned, but also in the countries interested indirectly, plays its part of censor or controller, and is there, in the long run, better punishment, at least in democratic countries, than public opinion ?

The annual report submitted to the I.L.O. by the Member State is also the object of a close examination on the part of the delegates to the Annual Conference. At such a time, the delegates of the respective countries may be invited to furnish supplementary information on the way in which the conventions are applied.

At any time, a Member State which has ratified a convention may lodge a complaint against another Member State which would have ratified the same convention, but who would not be carrying it out in a satisfactory way. In such a case, the normal procedure would be for the I.L.O. to communicate with the country involved and to invite it to make a declaration as in the case, indicated previously, of a protest made by a professional organization.

### **The Boards of Inquiry**

In addition, the I.L.O. if it does not judge it to be necessary to communicate the protest to the government concerned, or if no reply has been made to such a communication, may form a board of inquiry to study the question involved and to present a report on the subject. (The same procedure may be followed by the Governing Body, either of its own accord, or on the simple protest of any delegate to the Conference). The Board of Inquiry must include in its report all findings on the facts which would permit it to clarify the implications of the protest, as well as the recommendations that it feels should be made as to the measures to be taken in order to satisfy the government which has protested and the time to be allowed for these measures to be carried out. A respite of three months is given to the governments of the countries concerned to advise if they accept or not the recommendations of the board; and, if they do not accept, the time allowed permits them to indicate if they wish to submit the dispute to the Inter-

national Court of Justice, which could confirm, change or cancel the recommendations of the Board of Inquiry.

Finally, the Constitution of the I.L.O. provides expressly that if a member State does not conform within the time allowed, either to the recommendations of the Board of Inquiry, or the decision of the International Court of Justice, the I.L.O. through its Annual Conference, could decree such measures as would appear opportune to assure the carrying-out of the recommendations or of the decision in question.

### **The Case of Canada**

It is, moreover, to the Conference that the task falls of judging the measures to be taken in various cases, such as the one already noted previously of a recommendation which would not have been submitted to the competent legislative authority. This obligation exists, moreover, for States of which the constitution is a single unit as well as for federated states. However, when the member is a federated state, such as Canada, the situation is, in some respects, different. The Constitution of the I.L.O. states that if the federal government considers that according to its constitutional system, the question covered by the convention comes under the jurisdiction of the federal legislation, its obligations are the same as those of states of which the constitution is a single unit.

On the other hand, if the federal government is of the opinion that the questions covered are of the jurisdiction of the provinces, cantons or component states, it is authorized to consider the convention as not entailing any more obligations than a recommendation, that is to say, that it has only the obligation of referring the convention to the provincial or cantonal government authorities. It is, moreover, what it does in the case of a recommendation. It has, therefore, no more obligation in this case than in the case of a recommendation.

The situation which we have just outlined explains why the table of ratifications as at March, 1951, shows only twelve for Canada, whereas theoretically almost one hundred were possible. In a general way, Canada is not held responsible to ratify conventions except those of which the subject is reserved for the exclusive jurisdiction of the federal legislature, and it has been able to justify this attitude at the annual meetings of the International Labour Conference.



## The I.L.O. and the Federated States

It would seem undeniable that the Constitution of the I.L.O. grants a privileged situation to federated states of which the legislative jurisdiction in labour questions is not entirely reserved to the central power. It was desired to restrict the effects by a series of amendments adopted at the twenty-ninth Session of the Conference, held in Montreal in 1946. These amendments have only contractual effects depending on the engagements taken voluntarily by the federal and provincial authorities. It was specified, for example, that the federal government must conclude, in accordance with its constitution and the provincial constitutions, effective arrangements in order to be assured that conventions and recommendations will be submitted by the provincial governments to the appropriate authorities within the usual time limit, which is, at the latest, within eighteen months after the end of the Conference's session, for legislative or any other action. The federal government must also, after agreement with the provinces, take measures to establish periodical consultations between the federal and provincial authorities in order to develop inside the federated state, a coordinated action with the view of giving effect to the provisions of the conventions and recommendations. Finally, the government must report to the I.L.O. the efforts made to fulfil its obligations, both the recommendations and conventions, whether the latter are ratified or not, at the same time reporting the cooperation shown by the provinces.

In fact, the federated states will not have assumed, in the participation in the I.L.O. equality of obligations with single-unit states, until such time as they may advise that they have concluded with their constituent parts, arrangements which permit them to carry out all international treaties, including international labour conventions. Certain jurists have already invoked this principle in supporting it on the sole responsibility of the central government in a federated state to meet all international obligations, no matter what they may be. But let us forget the history of federated states, and, since the Constitution of the I.L.O. believed an exception should be made in their favour, let us know how for the present, to make use of this privilege with justice and dignity.

## Disputes

Finally, any international dispute in regard to the interpretation of the I.L.O.'s constitution and the decisions made by it will be sub-

mitted to the International Court of Justice, and, if such is the case, the I.L.O., through its Annual Conference of the delegates of the Member States, may be called on to recommend the measures to be taken to make effective the decisions made. This aspect of the problem has a little of what is called sanctions in international law. To speak of international sanctions in the present state of the evolution of world politics seems rather useless.

Yet, as far as the decisions of the International Labour Conference is concerned, it is not really so. Up to the present, the sole fact of exposing to the public eyes before a tripartite conference, that is to inform not only the governments but also the most representative employees' and employers' organizations all over the world, of the failings, the misunderstandings and all other circumstances which may have caused any counter-charges, has been sufficient to bring those in dispute back to the right road. In spite of setbacks and failures, international morale is not completely lost. The decisions of the International Labour Conference have fully shown this.

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