

THE PRINCIPLES OF INTERNATIONAL LABOR LEGISLATION

BY

ERNEST MAHAIM



Publication No. 2563

Reprinted from THE INTERNATIONAL LABOR ORGANIZATION

Vol. 166, of THE ANNALS of the

AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE

Philadelphia, March, 1933

The Principles of International Labor Legislation

By ERNEST MAHAIM

THE reply to the question why international labor legislation is needed is: on the same grounds as national legislation.

COMMON GROUNDS FOR NATIONAL AND INTERNATIONAL CONTROL

Too much stress cannot be laid on the reasons that necessitate legislative intervention for the protection of the workers. In 1802 an Act of the British Parliament (42 George III, c. 73), entitled "Health and Morals of Apprentices," for the first time limited the working day of apprentices to twelve hours and issued elementary regulations of hygiene and decency that indirectly implied how abominably these children had been treated. The reason for this act was precisely that the public conscience could not tolerate the criminal abuses to which freedom of competition had given rise in industrial establishments. The act was passed without opposition. The Government at that time was led by Sir Robert Peel, himself a mill owner, and he naively recognized that considerable abuses were to be found in his own industry.

This admission and the justification for the act must be remembered. At the very time of the great industrial revolution, there was no hesitation; it was recognized that an act was needed because, without an imperative law, competition between the factories would of itself be sufficient to keep abuses alive. What was the object of the act? To establish and maintain a minimum of hygiene and morals for the life and welfare of small children. Thenceforward and until today, such

has been the aim of all labor legislation, even international.

An experiment made in Belgium at the end of the nineteenth century showed in the most striking way the need for labor legislation. It took place when the laissez faire doctrine still predominated, though it was beginning to decline. The Catholic Government was hesitating to pass an act imposing the Sunday rest in industry and commerce. "Liberal" employers who were opposed to legislative intervention then founded a "private association for the Sunday rest" in the hope of obtaining from individual good will and conscience what it was not desired to impose by coercion. The association failed lamentably.

In a similar connection it is interesting to note that as early as 1850 to 1860 it was the textile manufacturers of Ghent and the managers of the Hainaut coal mines who, in Belgium, demanded legislative action to prohibit the employment of small children, since the competition of a minority might bring to nothing the good will of the majority of employers.

It is not surprising, therefore, that the forerunners of international labor legislation included manufacturers such as Robert Owen and Daniel Le Grand. But ideas should not be ascribed to them that were not theirs. Though it is true that the great English manufacturer and reformer formulated anticipations of genius and even demanded of the diplomats assembled at Aix-la-Chapelle that protective legislation should be made international, he never had the idea of

the conclusion of international conventions binding on the states. As to the liberal-minded Daniel Le Grand, though he conceived of a genuine "international labor legislation," he was inspired by moral, religious, and humanitarian motives. The effects of foreign competition, with which he was acquainted and whose significance he appreciated, were to him of only secondary importance.¹

DEVELOPMENT OF INTERNATIONAL LEGISLATION

It was later, as might be expected, that the argument of foreign competition was produced in connection with labor legislation, and it has never since left the forefront of discussion. It then had a twofold effect: on the one hand it tended to hamper the development of national legislation; and on the other, it gave an impetus to international action.

Fortunately, the former objection did not have completely negative effects. National legislation made progress under the pressure of public opinion and the political influence of trade unions, without waiting for other countries. Thus, all the British Factory Acts,² then all the laws of the Continental countries on the employment of women and children, and all the German social insurance laws were adopted without any concern as to international reciprocity.

¹ Mr. Krawtchenko, in a study published in the *Revue de Droit international* in 1910 entitled "*Robert Owen a-t-il eu véritablement l'idée d'un droit international ouvrier,*" put a definite end to this legend. See also Albert Thomas, *Mélanges offerts à M. Charles Andler*, Strasbourg, 1924, pp. 323-333. These works are cited by Mr. Raymond Weiss in his excellent book, *Daniel Le Grand (1783-1859), son oeuvre sociale et internationale*, Paris, Rivière, 1926, which brings out clearly the part played by Daniel Le Grand in the movement of opinion regarding international labor legislation. The preface to that volume by Albert

It should be observed, moreover, that these measures were parallel with the technical and economic progress that had tended towards a greater labor output and thus towards a reduction in the burden they imposed on production. But the very growth of this burden made the urgency of international intervention increasingly evident. Hence the repeated resolutions in favor of international legislation: opinions of economists and resolutions of congresses, not only of workers but also of bourgeois philanthropists, doctors, and manufacturers. These resolutions found an echo in the parliaments, and as early as 1881 the Swiss National Council arranged for the Swiss Federal Council to approach the governments of various industrial countries officially. The approaches were formally rejected, but when repeated in 1887, obtained a better reception and would have succeeded had it not been for the initiative of the German Emperor, who convened the first diplomatic labor conference at Berlin in March 1890.

INTERNATIONAL ASSOCIATION FOR LABOR LEGISLATION

It will be remembered that this conference adopted only resolutions, and that the powers assumed no positive engagements. It was seven years later that private initiative inaugurated a movement which was to produce more positive results. The Congress of Labor Legislation held at Brussels in 1897 led to the creation of the International Association for Labor Legislation, which was ultimately to accomplish that which the

Thomas is a magnificent synthesis of the whole question.

² It is noteworthy that the small volume published by Mrs. Sidney Webb in 1901 in support of labor legislation, *The Case for the Factory Act*, contains no mention of international action.

Berlin Conference had failed to do. It was founded in Paris in 1900, and included among its aims that of "serving as a bond of union to all who believe in the necessity for labor legislation." Its program was to organize an International Labor Office, which was set up at Basel under the leadership of Professor Stephan Bauer, and to "facilitate the study of labor legislation in all countries." It adopted from the outset a method that proved completely successful. This consisted in having a small number of questions studied in detail by all its national sections, and in applying to the governments only when these questions were ripe for treatment and the studies had been completed.

I described the Organization in 1906 in the following terms:

A league of social peace, grouping in the principal industrial nations, men of good will and resolution from all parties, denominations and classes, who accept the modern intervention of legislation in labor questions and desire its further progress. A body with a very limited and precise program of action, which is studied with great thoroughness and carried into effect. Frequent periodical assemblies duly followed up, where, in spite of the diversity of opinions, temperaments and interests, there is no disorder, discord or real hostility, where the most ardent set an example of moderation and the most timid one of firmness. A practical undertaking and, finally, a private foundation which assumes burdens that the states alone might be expected to assume, and which lives, prospers and grows on a footing of good understanding with all governments. That is the spectacle offered by the International Association.

The action of the Association may well be said to have been rapid and effective. By 1904 it could congratulate itself on having indirectly led to the conclusion of the first bilateral labor treaty—the Franco-Italian Treaty of

April 15, 1906—and two years later, on having led to the conclusion at Berne of the first two multilateral International Labor Conventions.

PRINCIPLES OF THE FIRST INTERNATIONAL LABOR TREATIES

Sufficient attention has perhaps not been paid to the principles underlying these first diplomatic acts; but it is worth while to bring them out, for they throw light on the nature and the importance of international labor legislation.

In the first place, while the Franco-Italian Treaty alludes to the objection of foreign competition by declaring in its preamble that it proposes "to ensure for the person of the worker guarantees of reciprocity similar to those that commercial treaties provide for the products of labor," it also specifies that it aims at "guaranteeing for the workers the maintenance of the protective measures already enacted in their behalf and at promoting *labor legislation*."

It is evident that in the two Berne Conventions these considerations, although not directly expressed, are dominant. The convention prohibiting the employment of white phosphorus in the match industry was at first signed by only six states, five of which did not use phosphorus. What was the object of these conventions? It was to consolidate at home measures for the protection of the workers, and, by their example, to promote further legislation. This result was achieved; for this poor little convention, which was ridiculed by its adversaries, is now the convention with the widest field of application.

As to the convention prohibiting the night work of women, among the twelve signatory states there were only three whose legislation did not establish the principle of prohibition.

It is true that the *methods* adopted were different in each of them, and that national laws had to be adapted in order to bring them into agreement; but the fact remains that foreign competition was not the principal preoccupation of the signatory states. On the contrary, the interest taken by all the states in the progress of labor legislation is patent.

After the Berne Conventions and until the war, the progress of international legislation was limited to the preparation, under the auspices of the International Association, of two new conventions (the ten-hour day for women and the prohibition of night work for young persons) which only the war prevented from being concluded.

THE INTERNATIONAL LABOR ORGANIZATION

The next step was the Peace Conference and the Treaty of Versailles, Part XIII of which created the permanent Labor Organization among the institutions of the League of Nations. This introduced two new elements into international legislation, although without changing its nature: on the one hand, the possibility of making it universal; and on the other, the participation of workers and employers in the preliminary legislative work.

Possible universality—

Universality, which could not possibly have been conceived at the time of the Berne Conventions, is expressly aimed at in the preamble of Part XIII. It was one of the visible preoccupations of the authors of this Part, the Commission on International Labor Legislation. The United States was not represented at the Berne Conference. Here they were present, and the president of the Commission was an American, Mr. Samuel Gom-

pers. Superhuman efforts were made to obtain the participation of the United States in the Organization and the Labor Treaties, and hence the institution, at the request of the American delegates, of "recommendations" side by side with the conventions.³

Care was taken to provide for exceptions or relaxations of the obligations assumed when necessitated for geographical, climatic, or economic reasons, but in principle, the legislation must aim at universality: "the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

Participation of workers and employers—

The participation of organized workers and employers in the international organization was a bold innovation from two points of view. In the first place, the International Association for Labor Legislation had never had a strong representation of workers or employers. It had remained in the hands of professors, statesmen, and administrators. The collaboration of workers, like that of employers, besides its great practical and technical advantages, meant a singular addition to the strength and prestige of the decisions taken. Secondly, from the point of view of international law it was an innovation to grant delegates of industrial associations the same rights as delegates of governments and to substitute for the traditional signature of plenipotentiaries the vote of an assembly (by a two-thirds majority).

³ Since labor legislation is in the competence of the several states and not of the Federal Government, it was feared that it would not be practicable for the United States to become a party to international labor conventions.—A. S. C.

These are original features of this Organization, which, vested with permanent powers, was thenceforth to be the fountain head of international labor legislation. They do not, however, affect the fundamental character of such legislation. Just as national labor laws place a certain number of demands for the welfare and dignity of the workers outside the scope of competition between employers, so, too, the international labor conventions tend to withdraw from foreign competition the demands of public opinion for humane conditions. They all, within their particular field of action, try to define the minimum labor conditions below which the standard of the workers should not be allowed to fall.

There can be no doubt that we have here a new and striking manifestation of international solidarity. The states assist one another and set one another an example in securing for humanity conditions of life worthy of civilized men.

OBJECTIONS

Uniformity an illusion—

This ideal has often been misunderstood. International labor legislation has been reproached for pursuing a chimera by its ignoring of differences of climate, race, and social development. Is it likely, for instance, that the eight-hour day can be as suitable in tropical as in polar areas? It is forgotten that one paragraph of Article 405 runs as follows:

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different, and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

It is in application of this provision that for several conventions special exceptions have been provided in favor of certain countries or areas.⁴ Thus the minimum in question is a relative minimum, capable of variations in space and even in time.

Oppressive policy of advanced countries—

International labor legislation has also been regarded as a Machiavellian means in the hands of rich, prosperous, and advanced states of imposing on poor and backward states burdens that prevent them from competing in international markets. Mr. Albert Thomas, the lamented Director of the International Labor Office, replying (in 1926) to this contention, said:

The idea, however, that the principle should be laid down that states may disregard the rules drawn up for the protection of workers and may seek, by means of exploiting their national labor supply no matter how harshly, to compete successfully with richer states where the workers are better treated is one which, should it ever assume an absolute and categorical shape, would undermine the whole Organization.

To illustrate the matter by means of a comparison: at the establishment of any industrial undertaking, its founders have to take into account certain natural exigencies to which the undertaking must be adapted. They cannot change either the thickness or the depth of a seam of coal; nor can they change the geographical conditions of the site in which they are obliged by force of circumstances to build a factory. Their industrial capacity is shown in the efforts which they make to adapt themselves to circumstances. The new feature introduced by the Peace Treaties consists in the fact that equitable labor

⁴ Cf. the Washington Convention of 1919 on hours of work, Articles 9 to 13, and the Geneva Convention of 1927 on sickness insurance, Article 9.

conditions established by national law or adopted by means of international Conventions are henceforward to constitute an inevitable condition and a natural necessity with which industrial employers must reckon in the same way as they reckon with geographical factors.⁵

It is at this point that the fundamental grounds for the two forms of labor legislation—national and international—meet. A state whose conditions of work are "inhuman" should be no more possible than an industrial establishment without rules of employment, without an obligation to compensate industrial accidents, without a fixed time-table, employing forced labor, and so forth.

Insufficient uniformity—

It is a curious fact that the International Labor Organization is also reproached for not aiming sufficiently at leveling conditions of work. It is said to have failed in its mission by not obtaining a large enough number of ratifications for its conventions. This is a very unfair distortion of the results obtained, which cannot be measured by ratifications alone. It is undoubtedly thanks to the prestige and the activity of the International Labor Organization that a number of industrially backward countries have entered on the path of labor legislation. Suffice it to state that many countries consult the International Labor Office on the establishment or the improvement of their legislation, although some of them are not members of the Organization. Every one knows, besides, that the propaganda effect of example is irresistible. There can be no doubt, for instance, that the Washington Convention on the eight-hour day has helped not only to consolidate the law in the countries which

have adopted it, but to extend it to many others—quite apart from the missing or conditional ratifications.

INTERNATIONAL LEGISLATION AND CLASSICAL ECONOMIC THEORY

A distinguished American economist, Mr. Herbert Feis, economic adviser to the State Department, arguing from the hypothesis of the truth of classical economic doctrine (without, however, indorsing it), has tried to demonstrate that the aims of international legislation are directly opposed to it. By hampering competition between countries with different standards of life, this legislation retards economic progress and general prosperity; it is useless for states with good conditions of labor, and perhaps dangerous for the rest.

This view rests on a belief in the omnipotence and excellence of free competition, and unfortunately can hardly be applied to the present situation, when everything conspires against freedom of competition, especially in the international field. But assuming even that the classical doctrine is true, it must be stated very clearly that competition must never encroach on human life, safety, and dignity. Even within a state, it is subject to limitations imposed by social organization and morals. It cannot be said that even where distress is greatest, wages have been reduced to the level of the physiological minimum. It is a recognized truth today that there are social demands that cannot be, and are not, ignored.

In this connection, it is possible that criticisms of this kind may be revived in the name of a recent theory. It is the theory that maintains that unemployment insurance is the cause of unemployment. Even admitting that it can be shown that some forms of unemployment relief tend to generate

⁵ International Labor Conference 1926, Report of the Director, p. 499.

unemployment, no one would maintain that the solution of the unemployment problem is literally to allow the unemployed to starve to death, just as no one would advise the workers to stop saving with a view to possible unemployment relief. The question may be raised of the extent or the amount of the relief or action against unemployment, but assistance for the unemployed remains a demand of modern economy.

Similarly, certain countries might argue in favor of abolishing labor legislation on the pretext that it adds to the cost of production. Is it really believed that salvation lies in the employment of small children, the night work of women, the shackling of workers to murderous trades, in excessively long working days, or in famine wages? And if this is not what is wanted, it follows that there is a minimum of living conditions below which the workers should not be allowed to fall. No more is needed to justify the efforts of the International Labor Organization.

ACHIEVEMENTS OF INTERNATIONAL LABOR ORGANIZATION

The measure of these efforts (and this must be stressed) is given by the results obtained since its foundation. What has it achieved? It has drawn up the principal parts of an international labor code of standards if not of laws, corresponding point by point with the program fixed in the preamble of Part XIII of the Treaty of Peace and in Article 427, which is the "Labor Charter."

The protection of young workers has been the subject of conventions on the age for admission to industrial employment (Washington 1919), to employment at sea (Genoa 1920), to agricultural employment (Geneva 1921), to employment as trimmers

or stokers on ships (1921), and to other non-industrial employment (1932); on the prohibition of night work (1919); on protection against lead poisoning (1921); and on compulsory medical examination for employment at sea (1921).

The protection of women includes the convention prohibiting night work (Washington 1919); that prohibiting employment before and after childbirth (1919); the recommendation on lead poisoning (1919); the convention on lead poisoning (1921); and the recommendation on the protection of women emigrants (1926).

The regulation of hours of work is covered by the Washington Convention on the eight-hour day (1919); that of Geneva on hours of work in shops and offices (1930), and on hours of work in coal mines (1931). To these may be added the interesting recommendation on the utilization of spare time (1924).

The recruiting of labor and the fight against unemployment are the subject of the Washington Convention and Recommendations (1919); the Geneva Convention on indemnity in case of shipwreck (1920); the recommendations on seamen's unemployment insurance (1920) and unemployment in agriculture (1921); the conventions on seamen's articles of agreement (1926) and their repatriation (1926).

Industrial hygiene is a chapter of the first importance in all labor regulations. It is the subject of conventions on: the use of white lead in painting (1921); compensation for occupational diseases (1925); prohibition of night work in bakeries (1925); the marking of the weight on heavy packages transferred by vessels (1929); and the work of dockers (1929).

Social insurance is dealt with in the convention on workmen's compensa-

tion for accidents (1925); and that on sickness insurance (1927), with its important recommendation on the general principles of sickness insurance. The next session of the Conference will no doubt adapt a convention on invalidity and old age, and will begin the study of unemployment insurance.

Equality of treatment for foreign and national workers is established by the Geneva Convention of 1926 on workmen's compensation for accidents and a recommendation.

Other subjects of conventions and recommendations are factory inspection, migration questions, forced labor, and minimum wage-fixing machinery.

Can it be said after this brief enumeration of thirty-three conventions, to which should be added thirty-six recommendations, that the International Labor Organization has not carried out the program assigned to it?

AN UNLIMITED TASK

But it will readily be recognized that this does not constitute all its task, which is vast and unlimited. As I said in 1930 in the speech by which I opened the Fourteenth Session of the International Labor Conference:

So long as there are children in the world whose life, whose physical, intellectual and moral development is hampered, arrested and endangered by the obligation to work; so long as there are men and women whose inexperience, ignorance and weakness lay them open to economic exploitation; so long as the dignity of human labor is unrecognized to such an extent that the product of labor does not permit the full life of a human being; so long as working conditions do not leave the noblest faculties scope for their essential development;—so long can it be said that social justice has not been realized and that the International Labor Organization still has a duty to perform.⁶

⁶ *International Labor Conference, Fourteenth Session, Vol. I.*

Professor Ernest Mahaim is professor of international labor at the University of Liège, and director of the Solway Institute of Sociological Research in Brussels. He participated in the organization of the old International Labor Organization of 1901 and in the establishment of its permanent office at Basel. During the war he headed the Belgian Ministry of Industry, Labor and Supplies. He has been a member of the Governing Body of the International Labor Office since 1920, and has served as its chairman. He is the author of numerous books on international labor legislation.