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SECOND SESSION

NOTE ON THE RESOLUTION ADOPTED BY THE COMMISSION ON HUMAN RIGHTS CONCERNING A PROVISION ON FORCED OR COMPULSORY LABOUR

The Commission on Human Rights, which met in Geneva from 2 December to 17 December 1947, adopted a Resolution entitled: "Minor Communal Services".

The text of the Resolution was as follows:

> "The Commission decided to refer paragraph 3 (c) of Article 8 of the Draft International Covenant on Human Rights to the International Labour Organization for early consideration and report in the light of the Forced Labour Convention of 1930."
> (Report of the Commission, page 16, paragraph 47).

As the text of the Resolution refers to the International Labour Convention of 1930 on Forced Labour, it seems desirable to compare the corresponding texts of the Covenant on Human Rights and of the Convention. The Convention must first, however, be placed in its historical context and the aims which it was intended to achieve be recalled.

After the Assembly of the League of Nations had adopted the Slavery Convention of 25 September 1926, the Council of the League of Nations examined a report on the Assembly's work and adopted, on the motion of Sir Austen Chamberlain, a Resolution by which the Council instructed the Secretary-General to inform the Governing Body of the ILO of "the importance which the Assembly and the Council attached to the work undertaken by the Office with a view to studying the best means for preventing forced or compulsory labour from developing into conditions analogous to slavery".

It is of interest to recall here the words of the Introduction to the report which the International Labour Office prepared for the first discussion on forced labour:

/"The preoccupations

"The preoccupations of the Assembly and of the Council (of the League of Nations) in this matter are easily explained. The labours of the Temporary Slavery Commission had revealed clearly enough that the suppression of slavery and the slave trade would not necessarily put an end to all conditions of labour of a servile character, and there was no lack of evidence that forced labour might result, and had resulted, in evils analogous to some of those produced by slavery. The Assembly had, for that reason, inserted in the Slavery Convention a clause condemnatory of forced labour without, however, entering into the details of its regulation which, as Viscount Cecil of Chelwood observed in the British House of Lords, were matters which the International Labour Office was much better qualified to consider."*

In carrying out its task the Office was anxious to surround itself with all possible safeguards and, at its request, the Governing Body created, at its Thirty-First Session (May 1926), a Committee of Experts on native labour. At the end of its First Session, this Committee adopted unanimously a number of Resolutions. The first expressed the Committee's sense of the urgency and importance of the regulation of forced labour, and requested the Governing Body to bring the matter before the International Labour Conference at an early date. This Resolution was communicated to the Governing Body, which placed the question of forced labour upon the agenda of the Twenty-Ninth Session of the Conference. The Convention which was adopted in consequence (in June 1930) may be summarized briefly. There are thirty-three Articles. Article 1 provides that each Member of the International Labour Organization which ratifies the Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period; with a view to this complete suppression, recourse to forced or compulsory labour may be had during the transitional period for public purposes only and as an exceptional measure, subject to the conditions and with the safeguards stipulated in the Convention.

Article 2 of the Convention, which will be mentioned several times in this note, is of particular importance, for it defines forced labour and then determines the exceptions allowed, i.e., forms of work exacted which are not considered to be "forced or compulsory labour".

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* Forced Labour, Report and Draft Questionnaire, International Labour Office, Geneva 1929, page 2.

Article 4 prohibits forced or compulsory labour carried out for the benefit of private individuals, companies or associations.

Article 5 prohibits the imposition of forced labour which concessions to private individuals, companies or associations would involve.

Articles 6 and 7 forbid officials or native chiefs to put constraint to work on the populations under their charge.

Articles 3 and 8-17 inclusive define safeguards in regard to the competent authority, conditions of work, the conditions of the communities concerned, hours of work, wages, workmen's compensation for accidents or sickness, the transfer of workers from one district to another and medical care.

Article 18 provides for the progressive abolition of forced labour for the transport of persons or goods.

Article 19 restricts recourse to compulsory cultivation to its use as a method of precaution against famine.

Articles 20 and 21 prohibit forced labour as a method of collective punishment and its use for work underground and in mines.

In this recapitulation of the general principles of the Convention, attention may be drawn to one aspect of the question on which a divergence appears between the text of the Covenant on Human Rights and the text of the Convention. It appears in the text relating to prison labour. This question was the subject of thorough study during the preparation of Convention 29. It is clear that, in a Convention the purpose of which was to complete the Slavery Convention, the use of prison labour in conditions inconsistent with the dignity of man could not be ignored. It was considered advisable to define the conditions in which the use of such labour might be allowed. The following is the passage concerning this subject:

"Article 2

"For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

"Nevertheless, for the purposes of this Convention, the term 'forced or compulsory labour' shall not include:

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or

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service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations."

The following is the draft text of the Covenant relating to the same question:

"Article 8

"1. No person shall be held in slavery or servitude.

"2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law."

It is hardly necessary to justify the safeguards provided by the text of the Convention. The abuses which may arise when prison labour is used are well known. The 1929 Report of the International Labour Office on Forced Labour cited a number of such abuses. There is, in the first place, the case of prisoners sentenced to pay fines and unable to pay them. These prisoners are sometimes placed at the disposal of private individuals, and it may happen that these private individuals trade on the weakness of the prisoners in encouraging them to incur debts so that their period of imprisonment is prolonged indefinitely. In other cases, the farmers to which prisoners are entrusted hire or sell the services of these men in conditions which are reminiscent of slavery. In brief, a labour system tends to grow up in which the interest of the employers in maintaining a cheap labour supply and the weakness of the authorities end in the exploitation of the prisoner's labour. It would seem indispensable, therefore, in a text designed for the regulation of forced labour, to provide for the control of prison labour by the public authorities and the prohibition of placing prisoners at the disposal of private individuals, companies or associations.

To conclude the history of Convention 29, its reception by the Member States of the International Labour Organization may be described. It came into force on 1 May 1932, and has been ratified by twenty-two States: Australia, Belgium, Bulgaria, Chile, Denmark, Finland, France, United Kingdom, Irish Free State, Italy, Japan, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Spain, Sweden, Switzerland, Venezuela and Yugoslavia. It should be noted that this list includes the States responsible for the great majority of non-metropolitan territories. In addition, the Indian Government delegate stated, during the discussions at the Twenty-Third Session of the Conference (Montreal, 1946) that the Government was examining the possibility of surmounting the

obstacles in the way of ratifying the Convention. It may also be pointed out that, although Portugal has not ratified the Convention, Portuguese law does, in fact, forbid forced labour for the benefit of private individuals, and authorizes compulsory labour only in certain specified cases.

After this preliminary survey, paragraph 3 (c) of Article 8 of the Draft International Covenant on Human Rights and sub-paragraph (e) of Article 2 of Convention 29 on Forced Labour, may be compared. Both texts deal with the same subject: the use of minor communal services considered as civic obligations of the community.

The following is the text of the Covenant on Human Rights:

"Article 8

1. No person shall be held in slavery or servitude.

2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(c) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives."

The following is the text of the Convention:

"Article 2

For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

/Nevertheless, for

Nevertheless, for the purposes of this Convention, the term 'forced or compulsory labour' shall not include:

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

The comparison of sub-paragraph (c) of Article 8 of the Covenant on Human Rights with sub-paragraph (c) of Article 2 of the International Labour Convention shows slight differences in drafting and one or two more serious divergencies. It will be noted, in the first place, that the text of the Covenant on Human Rights does not contain the expression "performed by the members of the community in the direct interest of the said community", which appears in Convention 29. On closer examination of this text, however, the conclusion is reached that this is a difference of secondary importance. The text of the Covenant is shorter than that of the Convention, but its general sense is the same. It is, in fact, clear that services which may be considered as normal civic obligations

incumbent upon the members of a community are, almost without exception, performed in the direct interest of that community. The text of the Convention does, however, contain a concept which does not find expression in the text of the Covenant. It aims at prohibiting compulsory labour which would force the workers to carry out public works of general interest for the benefit of a number of communities and at distances which might be great from the workers' homes. This applies particularly to communications linking communities in countries as yet relatively undeveloped. In these countries the task of maintaining and even constructing roads often falls on the local population. The same applies to the clearing of small irrigation canals and local watercourses.

The question of how far this work should be carried out by the local population as a normal civic obligation and how far it should be carried out as a charge on the general budget of public works in the territory is sometimes difficult to decide. Those who drafted Convention 29 tried to solve the problem on the basis of the replies of Governments. In this connection it may be noted that one Government in reply to the questionnaire of the International Labour Office proposed that minor communal services of a kind which has been traditional and customary among the local inhabitants or which have been imposed with the general approval of the community for the purpose of meeting new needs, should be excluded from the scope of the Convention "provided that they do not necessitate the workers' sleeping away from their homes"*

The preoccupation of the Governments and of the International Labour Office has clearly been to impose upon communities only moderate obligations to work which are in their own interest, so as to ensure, as far as possible, that they would have the approval of the people concerned.

It may be pointed out in answer to this argument that the text of the Covenant on Human Rights should achieve the same result since it provides that these obligations must be accepted by members of the community concerned either directly or through their directly elected representatives.

The most serious divergence between the text appears at this point in regard to the expression of opinion by members of the community concerned. According to the text of Convention 29, the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services. The text of the Covenant goes further; it provides that the obligations in question must be "accepted by the members of the community concerned either directly

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* Forced Labour Report I. International Labour Office, Geneva 1930, page 28.

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or through their directly elected representatives."

The implications of this passage may be made clearer by a reference to the discussions which preceded the adoption of Convention 29. The clause in question ("provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services") reproduces the text of an amendment presented by the workers' group and put forward by the worker's member for the Netherlands, Mr. Hadji Agoes Salim. This amendment was criticized in particular by the Australian Government Member who drew attention to the fact that this text did not take into account the still primitive state of certain native peoples (e.g. those of Papua). It would often be difficult to consult such peoples. This criticism was supported by the Portugese Government Member who pointed out that the organization of such plebiscites in regions like Central Africa would certainly cause serious difficulties to the Colonial administrations. The amendment was adopted finally after the United Kingdom Government Member had pointed out that there could not in fact be any question of a plebiscite but merely of consultation between the Chief and his tribe.

These remarks seem still valid. It is not easy to see in fact how it would be possible to apply the text proposed for the Covenant on Human Rights in the case of certain peoples among whom the practice of compulsory labour is most widespread. This objection applies particularly to two terms in the text of the Convention - to the work "accepted", which seems to imply a kind of referendum, and to the term "directly elected".

It may be noted in regard to the latter point that almost all native Chiefs acquire their authority by custom and tradition, with the implicit consent of the population. They are not elected, and if election were to be insisted upon the result might be that those who possess natural authority among these peoples, who best know their needs and capacities, would not be accepted as their authentic representatives.

It seems therefore that the text of Convention 29 meets the requirements of the situation more adequately. In this connection it may be useful to recall briefly the reasons for the introduction of the exception relating to "minor communal services". These labour obligations can thus be viewed in their true setting and the appropriateness of the text adopted can be appreciated.

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Following the double discussion procedure, the Office, before submitting a Draft Convention to the International Labour Conference, first undertook a study of legislation and administrative practice in the territories where forced labour is used. The results of this enquiry, which are set out in the 1929 Report prepared for the first discussion on forced labour, led up to a classification of the different forms of forced labour. In the first place, a distinction was made between forced labour for public purposes and forced labour in the service of private employers. In the second place, a distinction was made concerning forced labour for public purposes according to whether the "public purposes" in question were of a general nature and of interest of the territory or country as a whole or on the other hand, whether these public purposes were of a local nature, the local community being the direct beneficiary from labour requisitions in this way. The Office Report emphasized the important differences which lie between these two kinds of labour. Forced labour of local interest does not usually imply the prolonged absence of the worker far from his home nor the grave social consequences resulting from such absence. The levying of labour for local purposes therefore need not be subject to such strict safeguards as the levying of labour for general public purposes, provided that steps are taken to ensure that work falling in the latter category is not imposed upon certain populations in the guise of local obligations.

The Office study showed that forced labour for local public purposes was imposed both in metropolitan and non-metropolitan territories. The metropolitan territories concerned were Abyssinia, Bolivia, Liberia, Paraguay and Peru. To these may be added, Ceylon, India (in virtue of certain labour obligations imposed in Bihar and Orissa, and in the districts of Santal and Singhbuhm) Iraq, Lebanon, Southern Rhodesia and Syria. Some of these territories which were at that time non-metropolitan have since become metropolitan territories. Others, such as Indonesia, are now in a transitional stage. The compulsory labour in question mainly concerns the construction and maintenance of local roads and tracks and irrigation canals.

The following are the non-metropolitan territories concerned:

1. Territories administered by Australia: Nauru, New Guinea and Papua.
2. Territories administered by Belgium: Belgian Congo, and Ruanda Urundi.
3. Territories administered by Spain: The territories of the Gulf of Guinea and the Spanish Sahara.

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4. Territories administered by France: Apart from Algeria, Morocco and Tunisia, which may be regarded as metropolitan territories, there are in Africa: Cameroons, French Equatorial Africa and French West Africa, Madagascar and Togoland; in Asia: Indo-China; in Australasia and Oceania: the French possessions of Oceania and New Caledonia;

5. Territories administered by Great Britain: in Africa: Gambia, Gold Coast, Kenya, Nigeria, Northern Rhodesia, Nyasaland, Sierra Leone, Tanganyika, Uganda, and Zanzibar; in Asia: the territory of North Borneo; in Australasia and Oceania: Fiji, Gilbert and Ellice Islands and the Solomon Islands Protectorate.

6. Territories administered by Italy: Eritrea and, to some extent, Somaliland.

7. Territories administered by Japan: Formosa.

8. Territories administered by the Netherlands: (Indonesia has been mentioned above).

9. Territories administered by Portugal: in Africa: Angola; Cape Verde Islands, Portugese Guinea, Mozambique and San Tomé; in Asia: Portugese India.

10. Territories administered by the Union of South Africa: the territory of South West Africa.

The forms of compulsory labour exacted were extremely varied; the maintenance of communications, local sanitary work, the cleaning of villages, the construction and maintenance of communal buildings and the maintenance of canals were the services most generally exacted. The manner of their imposition also varied considerably, ranging from straightforward compulsion to a commutable "corvée" imposed as a tax.

From the survey given above, it is clear that the passage of the Convention exempting minor communal services corresponded to the necessities of the situation. The fact must be faced that in many countries compulsory labour exists and must be regulated. In particular, care must be taken to ensure that labour for general public services is not exacted from populations as a result of confusion between the interest of particular community and the interest of the territory as a whole. The text of the regulations must, however, be very flexible so that it can be adapted to widely varying populations and especially to the populations of relatively undeveloped territories. It is in fact among these populations that the imposition of minor communal services is met with most frequently.

A more general conclusion may be drawn from the above considerations for the purposes of a comparison between the text of Convention 29 and that of the Covenant on Human Rights. Setting aside all theoretical reasons for preferring one text to the other, it had to be borne in mind that the text of

the Convention has stood the test of time successfully. The twenty-two ratifications of the Convention show that in spite of the strictness of its provisions it has not been considered to be inapplicable even by States which are responsible for certain territories which are as yet relatively undeveloped. It may also be pointed out that the coming into force of the Convention has resulted in the promulgation in many territories of new legislation prohibiting, restricting or regulating the use of compulsory labour. This result may doubtless be attributed to the pressure of international public opinion. It is precisely the purpose of a Convention, however, to give expression to public opinion in order to secure positive progress.

As regards the specific appropriateness of the text of the Convention, the comparative examination undertaken in the preceding pages would seem to make it sufficiently clear that this text is more complete and more flexible than the text of the Covenant on Human Rights and makes greater allowance for the variety of traditions which exist in respect of forced labour.
