

most basic value. "*La sécurité d'abord,*" as the French thesis ran after the first World War; only then the intrinsic settlement of conflicts; here lies the difference between Chapters VI and VII of the Charter, between, within the Pan American orbit, the Rio Treaty and the Pact of Bogotá. First to establish security is the philosophy of recent developments, in the conviction that security is the indispensable pre-condition of later achieving justice. This philosophy may be wholly justified, but it is not the philosophy underlying the *bellum justum* doctrine.

JOSEF L. KUNZ

#### THE HUMAN RIGHTS COMMISSION AT THE CROSSROADS

The Commission on Human Rights is engaged in a valiant struggle to carry forward the banner raised in the Universal Declaration of Human Rights.<sup>1</sup> The "common standard of achievement" proclaimed in that Declaration was to be advanced, according to its terms, by teaching and education and by progressive measures, national and international, to secure the universal and effective recognition and observance of basic rights and freedoms. In attempting to obtain acceptance at this time of a universal covenant for national guarantees of basic civil and political rights, the Commission appears to us to have reached and passed a crossroads at which it should have stopped, looked and listened. It should now, in our opinion, return to the crossroads and consult anew the compass of human experience.

It was inevitable that the proposal of a covenant limited to civil and political rights would meet opposition from those who, on motives good, bad or mixed, demand equal guarantees for social, cultural and economic rights. It was inevitable that questions of great difficulty would arise with respect to the enforcement of national guarantees of even a limited group of basic rights in the constituent states of federal unions. The long discussions by which the proposed Covenant has been brought to the present stage may possibly be regarded as a part of the processes of teaching and education envisaged in the Universal Declaration. The Covenant itself, even if it is accepted in some form, cannot be regarded as a progressive measure to secure observance of human rights and freedoms.

The compass of human experience, which the Commission should consult in charting a new course, points to the methods which another international body has followed with success, over a period of thirty years, with respect to a significant part of the problem of human rights. The International Labor Organization, now one of the specialized agencies of the United Nations, was established in 1919 for the purpose of improving the conditions of labor throughout the world. It has pursued that purpose constantly by drafting and procuring the adoption of conventions and recommendations on one small subject after another, by recording the actual performance of

<sup>1</sup> See Supplement to this JOURNAL, Vol. 43 (1949), p. 127.

states with respect to the subjects dealt with, by providing remedies for non-observance of obligations assumed by states, and by acting as a stimulant to better performance by all. The scope of the ninety-eight conventions and eighty-seven recommendations which have been adopted by the General Conference of the ILO may be inferred from its recognition, in 1944, of "the solemn obligation" of the Organization "to further among the nations of the world programs which will achieve:

- (a) full employment and the raising of standards of living;
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labor, including migration for employment and settlement;
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- (e) the effective recognition of the right of collective bargaining, the co-operation of management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- (g) adequate protection for the life and health of workers in all occupations;
- (h) provision for child welfare and maternity protection;
- (i) the provision of adequate nutrition, housing and facilities for recreation and culture;
- (j) the assurance of equality of educational and vocational opportunity.

Under the Constitution of the ILO, the recommendations of the General Conference are communicated to all members with a view to their being given effect by national legislation or otherwise. Members are bound, after bringing each recommendation to the attention of the competent authorities, to report, at appropriate intervals:

the position of the law and practice in their country in regard to the matters dealt with in the recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

The conventions adopted by the General Conference are referred by each member of the Organization to the competent authorities in its country

with a view to ratification, except as provided with respect to conventions which the national government in a federal state "regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons rather than for federal action." The Constitution of the Organization originally provided that "in the case of a federal State, the power of which to enter into conventions on labor matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only." This provision was amended in 1946. The duty of our Federal Government, for example, with respect to ILO conventions which it regards as wholly or partly within the sphere of action of our States, is now:

- (a) to make effective arrangements for reference of the conventions to the appropriate Federal or State authorities for the enactment of legislation or other action;
- (b) to arrange for periodical consultations between the Federal and State authorities with a view to promoting co-ordinated action to give effect to the conventions;
- (c) to inform the International Labor Office (the Secretariat of the Organization) of the measures taken to bring the conventions before the appropriate Federal or State authorities and of the action taken by those authorities; and
- (d) to report to the International Labor Office, at appropriate intervals, the position of the law and practice of our country as a whole and of the States in regard to the conventions, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the conventions by legislation, administrative action, collective agreement or otherwise.

It is important to note that the Constitution of the International Labor Organization contains no guarantee of human rights and freedoms. The members of the Organization joined in a declaration in 1944 that "labor is not a commodity"; that "freedom of expression and of association are essential to sustained progress"; that "poverty anywhere constitutes a danger to prosperity everywhere"; that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity"; and that "the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy." They have not, however, gone so far as to transpose to the key of international commitment the guarantees of the conditions of labor which many of them have embodied in their national constitutions.

It is of equal importance to observe that the members of the International Labor Organization are not bound by the Constitution of that body to accept the conventions adopted at meetings of the General Conference. Those con-

ventions are adopted by a majority of two-thirds of the votes cast by the delegates present. They are not signed on behalf of the governments represented. It is, of course, expected that a government will obtain the ratification of conventions for which its representatives have voted in the General Conference. The only obligation of a government which does not obtain the ratification of any convention is, however, to report to the International Labor Office at appropriate intervals:

the position of its law and practice in 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.

Two further provisions of the ILO Constitution that should be noted relate to annual reports and the procedure for handling complaints. Each member of the Organization is bound to make an annual report to the International Labor Office on the measures taken by it to give effect to conventions to which it is a party. The Governing Body of the Organization is authorized to receive complaints from associations of employers or of workers that any member of the Organization has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party. Complaints are referred to Commissions of Enquiry and may be submitted for final decision to the International Court of Justice.

The federal state provisions of the ILO Constitution are of special importance in the consideration of practical measures for carrying forward the standard raised in the Universal Declaration of Human Rights. They are of special importance for two reasons: First, the highest level of actual observance of human rights and the most earnest desire to improve the condition of mankind throughout the world are found in some of the federal states, such as the United States and Canada, in which serious practical difficulties in the effectuation of national guarantees arise from the constitutional and traditional division of powers between federal and state or provincial authorities. Secondly, the federal state provisions of the ILO Constitution are the obvious source of the federal state article which has been suggested by our Government, with the support of a number of other governments, for inclusion in the proposed Covenant on Human Rights. This article, in the latest available draft, reads as follows:

In the case of a federal State, the following provisions shall apply:

(a) With respect to any articles of this Covenant which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces or cantons, the federal government shall bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

This article is, in our opinion, wholly unsuitable for inclusion in an instrument by which our Federal Government would commit our whole nation to guarantees of specified rights to all individuals within our territory. It should be obvious that every international obligation assumed by our Federal Government through a valid exercise of the treaty power is binding upon our State authorities as well as upon our Federal authorities. We have to choose between giving national guarantees and not giving them. If we give them, we must be prepared to stand behind them all the way, obtaining the co-operation of the State Governments to the fullest possible extent, but realizing that, if that co-operation is withheld, we have still another choice to make: We must take direct Federal action to effectuate the guarantees or we must accept the international consequences of our failure to do so.

The road to be taken by the Commission on Human Rights is plain. It is, essentially, the way of the ILO. The problem of the present and of the long future, in promoting the observance of fundamental rights and freedoms, is to obtain agreement and common action on small, practical measures in the direction indicated by the Universal Declaration. This is no time for paper guarantees in broad and general terms. A Commission on Human Rights duly reoriented could appreciably shorten the time the world has to wait for the assurance of a good life to "all the men in all the lands."

EDGAR TURLINGTON

#### THE NEED FOR A RETURN TO INTERNATIONAL LAW

It would be relatively easy today to compose a devastating comment upon international law as an instrument for the promotion of international peace and justice. It would be assumed, of course, in the terms of the basic statement of principles of the American Society of International Law, that the maintenance of international relations on the basis of law and justice constituted the highest objective in this sphere. But it would be relatively easy to demonstrate that international law, as such, had proven a very weak instrument for this purpose. This problem has again become of some interest, not to say actually acute, as a result of the continued difficulties of the United Nations International Law Commission and opinions recently expressed in that connection.<sup>1</sup>

<sup>1</sup> See the Report of the Commission to the Fifth General Assembly, General Assembly, 5th Sess., Official Records, Supp. No. 12 (U.N. Doc. A/1316); this JOURNAL, Supp., Vol. 44 (1950), p. 105.