

LEAGUE OF NATIONS

Communicated to the Council
and Members of the League

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Geneva, August 2nd, 1944.

QUESTION OF RIGHT OF DIRECT ACCESS
OF THE INTERNATIONAL LABOUR ORGANISATION
TO THE PERMANENT COURT OF INTERNATIONAL JUSTICE
FOR THE PURPOSE OF SECURING ADVISORY OPINIONS.

Note by the Acting Secretary-General.

The Acting Secretary-General has the honour to transmit to States Members of the League of Nations, for their information, a copy of a communication which he has received from the Acting Director of the International Labour Office concerning a suggestion which aims at giving to the Governing Body of the International Labour Office and to the International Labour Conference a right of direct access to the Permanent Court of International Justice for the purpose of securing advisory opinions.

Annexed will be found a note concerning (1) the advisory opinions relating to labour questions given by the Permanent Court in the past, and (2) the relevant provisions of international instruments (Covenant of the League of Nations, Statute of the Permanent Court of International Justice, Charter of the International Labour Organisation).

INTERNATIONAL LABOUR OFFICE

MONTREAL, Canada
3480 University Street

June 2nd, 1944.

Sir,

I have the honour to enclose herewith for your information a copy of a letter and memorandum relating to the jurisdiction vested in the Permanent Court of International Justice by the Constitution of the International Labour Organisation which I have communicated to the Governments of the Members of the International Labour Organisation.

I have the honour to be,
Sir,
Your obedient servant,

(sd) E.J. Phelan
Acting Director.

The Secretary-General
of the League of Nations,
GENEVA.

MONTREAL, Canada

June 2nd, 1944.

Sir,

I have the honour to draw your attention on behalf of the Governing Body of the International Labour Office to certain considerations relating to the jurisdiction vested in the Permanent Court of International Justice by the Constitution of the International Labour Organisation, and to request that these considerations should be borne in mind by the governments of the Members of the Organisation when making plans and taking decisions in regard to the future of international judicial arrangements.

At the present time it appears to be uncertain whether the historical continuity of the Permanent Court of International Justice will be maintained after the war or whether some new international court will be created. In view of this situation I am to draw your attention to the importance which the Governing Body of the International Labour Office attached to the maintenance of arrangements at least equivalent to the provisions of the Statute of the Permanent Court, as at present in force, which give the International Labour Office the right of furnishing the Court with all relevant information in labour cases and which permit international organisations, including the international organisations of employers and of trade unions which play so important a rôle in the International Labour Organisation, to submit written and oral statements to the Court. Experience has demonstrated that these arrangements have been of great practical value in facilitating the exercise by the Court of the jurisdiction entrusted to it by the Constitution of the International Labour Organisation and making possible for the Court to play a major rôle in the development of the constitutional law of the Organisation with the full confidence and support of all elements in the Organisation.

The Governing Body has authorised me to suggest for your consideration the desirability of one major change in the present arrangements. The Statute of the Permanent Court, as at present in force, does not give the Governing Body of the International Labour Conference any right of direct access to the Court to secure an advisory opinion, the right to request such opinions being reserved to the Council and Assembly of the League of Nations. It has frequently been suggested that it would be desirable that the International Labour Organisation should be entitled to submit directly to the Court requests for advisory opinions concerning questions involving the interpretation of the Constitution of the Organisation, of international labour conventions, or of other instruments adopted under the auspices of the Organisation. The arrangements in regard to the reference of questions to the Court for its advisory opinion now seem likely to be reconsidered, and such reconsideration would appear to afford an appropriate opportunity for granting the International Labour Organisation the right of direct access to the Court. I am therefore to request that your government should give favourable consideration to this possibility.

Subject to the foregoing observations, the continued exercise of the jurisdiction entrusted to the Permanent Court by the Constitution of the International Labour Organisation will, if the historical continuity of the Court is maintained, present no special difficulty. If, on the other hand, a new international court should be created in substitution for the Permanent Court of International Justice questions will arise in regard to the manner in which the jurisdiction entrusted to the Permanent Court of International Justice by the Constitution of the Organisation is to be transferred to the new court and the International Labour Organisation would therefore wish to be associated with the consideration of any measures which might be proposed for the transfer to the new court of the jurisdiction vested in the Permanent Court by existing instruments.

--- I venture to enclose herewith a memorandum mentioning certain further questions in regard to the jurisdiction and procedure of the Court in relation to matters of interest to the International Labour Organisation which, though of a less urgent character, might also usefully receive consideration during the examination of future international judicial arrangements if an appropriate opportunity should occur.

It is appreciated that in regard to all these questions the relationship of the International Labour Organisation to future international judicial arrangements must necessarily be considered as a part of a more general problem, and I am therefore to suggest that this result could most conveniently be achieved by associating the International Labour Organisation in an appropriate manner with the consideration of such arrangements. In this connection the Governing Body has authorised me to inform you that the International Labour Office will be glad to give the fullest co-operation at any stage in the consideration of these questions at which it may be able to be of any assistance.

(sd) E.J. Phelan
Acting Director.

INTERNATIONAL LABOUR OFFICE

MONTREAL, Canada
3480 University Street
June 2nd, 1944

MEMORANDUM

In addition to the questions raised in the letter to which this memorandum is annexed, the following points might usefully receive consideration during the examination of future international judicial arrangements if an appropriate opportunity should occur.

One of the purposes of international labour conventions is to secure a measure of uniformity in the social legislation of different countries. In many cases, the provisions of the conventions are designed to be incorporated (either textually or more frequently in substance) in the municipal law of the countries which are parties to them. Municipal courts are accordingly called upon from time to time to determine questions involving the interpretation of the provisions of international labour conventions. If the decisions of such courts are based on divergent principles, as in a few cases they already are, the measure of uniformity achieved by international conventions will be progressively destroyed as judicial interpretation in different countries proceeds on different lines. It is therefore important that there should be arrangements of a practically satisfactory character which make it possible to avoid such divergencies, or eliminate them as they occur without undue delay, by recourse to an international tribunal for an authoritative decision. Under the Statute of the Permanent Court of International Justice as at present in force there are only two methods by which such matters can be brought before the Court : the institution by one State of contentious proceedings in which another State is named as defendant and a request for the advisory opinion of the Court on behalf of the Council or Assembly of the League of Nations. Neither of these procedures is entirely appropriate for the purpose in view. The disadvantages of the existence of divergent views regarding the interpretation of an international labour convention are unlikely to be regarded by those responsible for the foreign policy of a State as a sufficient reason for accepting the political responsibility involved in the institution of contentious proceedings by one State against another State. Nor is the advisory procedure an altogether satisfactory substitute in such cases. There would therefore appear to be substantial advantages in a procedure whereby a municipal court called upon to give a decision involving the interpretation of an international labour convention could submit the international questions at issue for decision to the Permanent Court or any new court which may be established, the International Labour Office and the parties to the convention being entitled to participate in the proceedings in accordance with established practice. Since the Permanent Court has compulsory jurisdiction to determine questions relating to the interpretation of international labour conventions in virtue of Article 37 of the Constitution of the Organisation, the acceptance of the suggested procedure would not involve extending the principle of compulsory jurisdiction to matters which in the absence of such a procedure could be referred to an international tribunal for decision only by special agreement between the States concerned.

Article 34 of the Statute of the Permanent Court as at present in force provides that "Only States or Members of the League of Nations can be parties in cases before the Court". In view of the tendency to create a number of public international organisations with specialised functional responsibilities enjoying varying degrees of independence and likely to enter into agreements with each other analogous to treaties between States, it would seem desirable that the Permanent Court or any new court which may be established should be empowered to assume jurisdiction of any dispute between two or more such organisations which the parties thereto may refer to it or in respect of which it may be granted jurisdiction by treaties or conventions binding upon the organisations concerned. The effect of such a provision would be to give the Permanent Court or its successor a jurisdiction in disputes between public international organisations equivalent to the jurisdiction in disputes between States conferred by the first paragraph of Article 36 of the Statute of the Permanent Court as at present in force.

Article 62 of the Statute of the Permanent Court as at present in force provides that "Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party" and that "It will be for the Court to decide upon this request". It would seem appropriate that there should be some similar provision permitting the participation in proceedings before the Court, or any new court which may be established, of a public international organisation having an interest of a legal nature in matters arising for decision. Such participation need not necessarily take the technical form of intervention as a third party. In like manner, where a public international organisation has rights or obligations under an instrument the construction of which is in question, it would seem desirable that it should be entitled to participate in the proceedings as of right on the analogy of Article 63 of the Statute as at present in force.
