an act signed by plenipotentiaires, *i.e.*, is to be given to the draft as elaborated and without modification.

In this connection the memorandum submitted by the International Labour Office, whatever doubts it may inspire regarding certain points of detail, seems to be entirely accurate and it rightly draws attention to the objections to any unilateral reservation or modification which a State might claim to attach to its assent.

C. 212.1927 V

ANNEX 967a.

ADMISSIBILITY OF RESERVATIONS TO GENERAL CONVENTIONS.

MEMORANDUM BY THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE.

Submitted to the Council on June 15th, 1927

On March 17th, 1926, the Council of the League of Nations adopted a resolution requesting the Committee of Experts for the Progressive Codification of International Law to report on the question of the admissibility of reservations to general conventions.

This important question of principle was raised by the British Government, which addressed a memorandum on the subject to the Members of the Council.

The International Labour Office is not competent to express an opinion on the question as a whole. It feels called upon, however, to draw attention to the peculiar legal character of the conventions adopted by the International Labour Conference. These form an important class of general conventions, and it seems scarcely possible to settle the question which the Council has submitted to the Committee of Experts for the Progressive Codification of International Law without reference to their existence and without considering their peculiar nature, which it is the object of this memorandum to define.

* * *

International labour conventions, for the adoption of which provision is made in Part XIII of the Treaty of Versailles and in the corresponding parts of the other Peace Treaties, differ from ordinary general conventions in three respects — their preparation, conclusion and application.

International labour conventions are prepared by the General Conference of representatives of the members of the International Labour Organisation. The Conference is not an ordinary diplomatic congress. It includes not only Government delegates, but also non-Government delegates representing the employers and the workers. The non-Government delegates, who should in principle constitute half the members of the Conference, have the same rights as the Government delegates. This international assembly so original in its composition, is invested by the treaties with power to adopt "draft conventions". Unanimity is not required for their adoption a two-thirds majority suffices, no distinction being drawn between the votes of Government and non-Government delegates.

The draft conventions, being adopted by a two-thirds majority of the Conference, are not signed by plenipotentiaries and have to be submitted by the Governments directly to their respective legislatures, with whom lies the decision whether the State should or should not contract the engagements involved. When a State accepts a draft convention, its Government informs the Secretary-General of the League of Nations that it has ratified the convention, and as soon as a certain number of ratifications (usually two) have been obtained, the draft becomes a convention in the strict sense of the term. The adoption of a draft convention by a two-thirds majority of the Conference may thus be said to take the place of the traditional formality of signature. The instruments adopted by the Conference are not binding on the States. The Conference determines their *ne varietur* form and their purport, but every member of the International Labour Organisation is free to ratify or not to ratify and only those States which do ratify are mutually bound by the Convention.

Lastly there is a difference between international labour conventions and ordinary conventions in the matter of their application. Whereas an ordinary convention normally has the form of a diplomatic instrument, complete in itself and constituting, as it were, the property of the Contracting States, international labour conventions are inseparable from the provisions of the Treaties which govern the International Labour Organisation. The ratification of these conventions involves not merely the acceptance of the obligations explicitly stipulated in them, but also the acceptance, within the field covered by each convention, of all the general rules laid down in Part XIII of the Treaty of Versailles and the corresponding parts of the other Treaties of Peace.

In particular, ratification involves the obligation to submit to the procedure established by the treaties in order to enforce the conventions, and also the obligation to accept the jurisdiction of the Permanent Court of International Justice in questions relating to their application and interpretation.

* * *

The foregoing brief survey establishes beyond all doubt that international labour conventions have a very peculiar legal character, and that, so far as they are concerned, the question of the admissibility of ratifications subject to reservations presents itself in a special form. If, as some writers suggest, treaties may be classified according to their nature as law-treaties and contract-treaties, international labour conventions should probably be regarded as law-treaties. Perhaps, however, they might be more accurately defined as " treaties of accession " They appear to be legal instruments partaking of the nature both of a law and of a contract. They have a contractual character in the sense that they are mutually binding only upon those States which have of their own free will ratified them and they have a legislative character in the sense that they are produced by a special authority which fixes a sole and universal text. While free to adhere or refrain from adhering, the contracting parties cannot impair the force of these general instruments by means of special conventions or declarations.

In any event, the admissibility of reservations presupposes, according to the general principles of international law, the consent, either explicit or tacit, of the high contracting parties.

In the case of international labour conventions, however, such consent is unobtainable. These agreements are not drawn up by the Contracting States in accordance with their own ideas they are not the work of plenipotentiaries, but of a conference which has a peculiar legal character and includes non-Government representatives. Reservations would still be inadmissible, even if all the States interested accepted them for the rights which the treaties have conferred on non-Governmental interests in regard to the adoption of international labour conventions would be overruled if the consent of the Governments alone could suffice to modify the substance and detract from the effect of the conventions.

In theory, reservations would only be admissible if they were accepted by all the bodies concerned in the adoption of the convention, *i.e.*, by the International Labour Conference. This hypothesis itself, however, cannot be realised. If the acceptance of the reservations is simply equivalent to an interpretation of the convention, the Conference is not competent to give it, since, under the treaties, the interpretation of the Labour Conventions is expressly reserved for the Permanent Court of International Justice. If, on the other hand, the acceptance of the reservations substantially modifies the significance of the texts originally adopted, then it constitutes a revision, for which the Conference is competent, but in that case the effect of the revision would be to create a new convention, and it would, in consequence, annul all previous ratifications, since the Conference's decisions are not binding on the States Members of the International Labour Organisation.

Obviously, therefore, legal arguments force us to deny the admissibility of reservations on the occasion of the ratification of international labour conventions. In addition to this theoretical argument, a further argument may be drawn from the actual texts. Article 405 of the Treaty of Versailles, and the corresponding articles of the other Peace Treaties, refer to the necessity of taking into consideration the special circumstances of each country They provide that

> " 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 organisation, 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."

This would suggest that the object of the framers of the Treaty of Peace, in imposing on the Conference this obligation to give preliminary consideration to the special circumstances of each country was to prevent States from pleading, after the adoption of a convention, a special situation which had not been submitted to the Conference's judgment.

Finally there is a practical argument which may be adduced in support of the view that reservations are inadmissible. If reservations made on the occasion of ratification were accepted, a legal deadlock would inevitably be reached every State would thus be contracting engagements of varying scope according to the significance of its reservations. This argument may be applied in a general way to all collective treaties but, in the case of international labour conventions, it has a special importance, on which stress must be laid. The object

of the International Labour Organisation is to safeguard conditions of labour against the detrimental influence of international competition and this is the reason why international labour conventions must establish a network of mutual obligations among the various States. It is essential that exact reciprocity should be preserved in these obligations, and to that end the Peace Treaties establish an extremely detailed procedure for the enforcement of the conventions. It is perfectly obvious that the admission of reservations on the occasion of ratification would soon destroy the practical value of the international engagements in question and upset the balance which it is the object of the conventions to establish as regards industrial competition. The procedure of enforcement would become inoperative, and the entire system of the International Labour Organisation would collapse.

* * *

In view of the foregoing considerations, it is fair to say that, while, generally speaking, the ratification of collective treaties with reservations is a procedure of doubtful legality in the special case of international labour conventions it meets with definite and insurmountable objections.

It may not be without value to point out that the question was raised some years ago by certain members of the International Labour Organisation. In 1920, the Polish Government contemplated the possibility of ratifying, with certain reservations, the Washington Conventions on the Employment of Women before and after Confinement, on Night Labour for Women, and on Unemployment. In 1921, the Government of India proposed to follow the same procedure in connection with the Washington Convention on the Minimum Age for the Employment of Children in Industry After some correspondence with the International Labour Office, both Governments gave up the idea of ratifying with reservations. The correspondence was communicated by the International Labour Office to all the Members of the Organisation, and was also laid before the International Labour Conference. The view taken by the Office met with no opposition, and it may be assumed that recourse to this procedure is no longer a practical question.

It should, however, be explained that certain international labour conventions have been ratified subject to the specific condition that the ratifications in question should only become operative when certain States named should also have ratified. These ratifications do not really contain any reservation, but merely a condition which suspends their effect when they do come into force, their effect is quite normal and unrestricted. Such conditional ratifications are valid, and must not be confused with ratifications subject to reservation which modify the actual substance of conventions adopted by the International Labour Conference.

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ANNEX 968.

LIQUIDATION OF PROPERTY OF GREEK AND BULGARIAN EMIGRANTS EXECUTION OF THE COUNCIL'S RECOMMENDATIONS OF DECEMBER 14th, 1925.

Letter from the Bulgarian Government to the Secretary-General of the League, submitted to the Council on June 16th, 1927

[*Translation.*] Berne, June 10th, 1927

With reference to the resolution of the Council of the League of Nations of December 14th, 1925, and in continuation of my preceding communication on the same subject, dated March 2nd[1] I have the honour to inform you that the Bulgarian Government has continued its efforts to do all in its power to ensure the regular and rapid application of the Convention on Voluntary Emigration signed by Bulgaria and Greece at Neuilly-sur-Seine on November 27th, 1919.

(Signed) D. MIKOFF,
Bulgarian Charge d'Affaires.

See *Official Journal*, June 1927, page 732.