DEUXIÈME PARTIE

SÉANCES PUBLIQUES ET PLAIDOIRIES

PART II.

PUBLIC SITTINGS AND PLEADINGS.

COUR PERMANENTE DE JUSTICE INTERNATIONALE

VINGT-SIXIÈME SESSION (EXTRAORDINAIRE)

PREMIÈRE SÉANCE PUBLIQUE

tenue au Palais de la Paix, La Haye,
le vendredi 14 *octobre* 1932, *à* 10 *h.* 30,
sous la présidence de M. Adatci, Président[1].

Présents: MM. ADATCI, *Président;* GUERRERO, *Vice-Président;* le baron ROLIN-JAEQUEMYNS, le comte ROSTWOROWSKI, MM. FROMAGEOT, ANZILOTTI, URRUTIA, sir CECIL HURST, MM. SCHÜCKING, NEGULESCO, Jhr. VAN EYSINGA, *juges;* M. JORSTAD, *Greffier-adjoint.*

Le PRÉSIDENT, ouvrant l'audience, annonce que la Cour tient aujourd'hui la première audience de sa 26me Session, session extraordinaire, convoquée conformément à l'article 23, alinéa 3, du Statut et à l'article 27, n° 3, du Règlement.

La Cour devra, cette fois, siéger en l'absence de quatre de ses membres, MM. Kellogg, de Bustamante, Altamira et Wang, que leur état de santé empêche de venir à La Haye en ce moment.

Le Président prie le Greffier-adjoint d'indiquer les affaires actuellement inscrites au rôle général de la Cour.

Le GREFFIER-ADJOINT mentionne les affaires suivantes:

1° l'affaire dite du Groënland oriental, entre le Danemark et la Norvège, affaire qui sera en état aujourd'hui, 14 octobre;

2° l'affaire relative aux eaux territoriales entre Castellorizo et l'Anatolie. Cette affaire, qui met en cause l'Italie et la Turquie, sera en état le 1er juin 1933;

3° l'affaire relative à l'interprétation de la Convention de 1919 concernant le travail de nuit des femmes. Cette affaire, dans laquelle la Cour est priée de donner un avis consultatif au Conseil de la Société des Nations, est en état depuis le 21 septembre 1932;

4° l'affaire relative à l'administration du prince de Pless. Cette affaire, qui met en cause l'Allemagne et la Pologne, aurait dû être en état, quant au fond, le 10 décembre prochain;

[1] Deuxième séance de la Cour.

PERMANENT COURT OF INTERNATIONAL JUSTICE

TWENTY-SIXTH (EXTRAORDINARY) SESSION

FIRST PUBLIC SITTING

held at the Peace Palace, The Hague, on Friday, October 14th, 1932, at 10.30 a.m., the President, M. Adatci, presiding [1].

Present: MM. ADATCI, *President;* GUERRERO, *Vice-President;* Baron ROLIN-JAEQUEMYNS, Count ROSTWOROWSKI, MM. FROMAGEOT, ANZILOTTI, URRUTIA, Sir CECIL HURST, MM. SCHÜCKING, NEGULESCO, Jhr. VAN EYSINGA, *Judges;* M. JORSTAD, *Deputy-Registrar.*

The PRESIDENT, in declaring the hearing open, announced that the Court had met for the first sitting of its 26th Session, an extraordinary session convened under Article 23, paragraph 3, of the Statute, and Article 27, paragraph 3, of the Rules of Court.

The Court had to sit, on the present occasion, in the absence of four of its members, MM. Kellogg, de Bustamante, Altamira and Wang, who were unable, for reasons of health, to come to The Hague at this time.

The President requested the Deputy-Registrar to mention the cases at present entered on the General List of the Court.

The DEPUTY-REGISTRAR mentioned the following cases:

(1) the case known as that of Eastern Greenland, between Denmark and Norway, which became ready for hearing that day, October 14th;

(2) the case concerning the territorial waters between Castellorizo and Anatolia. This case, in which Italy and Turkey were the Parties, would be ready for hearing on June 1st, 1933;

(3) the case relating to the interpretation of the Convention of 1919 concerning the employment of women during the night. This case, in which the Court is requested to give an advisory opinion to the Council of the League of Nations, had been ready for hearing since September 21st, 1932;

(4) the case concerning the Administration of the Prince of Pless. This case, in which Germany and Poland were the Parties, should have been ready for hearing, as regards the

[1] Second meeting of the Court.

toutefois, une exception préliminaire d'incompétence venant d'être soulevée, cette question devra être tranchée en premier lieu : elle sera en état, quant à la procédure afférente à cette exception préliminaire, le 31 courant ;

5° un appel du Gouvernement tchécoslovaque contre deux sentences rendues le 21 décembre 1931 par le Tribunal arbitral mixte hungaro-tchécoslovaque ;

6° une affaire entre la Norvège et le Danemark relative au territoire sud-est du Groënland ;

7° un appel du Gouvernement tchécoslovaque contre une sentence rendue le 13 avril 1932 par le Tribunal arbitral mixte hungaro-tchécoslovaque.

Dans les trois dernières affaires, la Cour s'est réservée de fixer ultérieurement les derniers délais de la procédure écrite, délais dont dépendra la date à laquelle ces affaires seront en état.

Le PRÉSIDENT fait observer que, de toutes les affaires inscrites au rôle général, seules celle qui a trait à la Convention de 1919 concernant le travail de nuit des femmes et celle dite du Groënland oriental figurent jusqu'ici au rôle de la présente session ; la Cour s'occupera aujourd'hui de l'affaire relative à l'interprétation de la Convention de 1919 concernant le travail de nuit des femmes.

Il prie le Greffier-adjoint de donner lecture de la résolution du 9 mai 1932 par laquelle le Conseil de la Société des Nations a décidé de demander à la Cour un avis consultatif à ce sujet.

Le GREFFIER-ADJOINT ayant donné lecture de cette résolution, le PRÉSIDENT ajoute que la requête pour avis a fait l'objet des notifications d'usage. Elle a été, en vertu de l'article 73, n° 1, alinéa 2, du Règlement, transmise aux organisations internationales jugées susceptibles par la Cour de fournir des renseignements sur la question, savoir, l'Organisation internationale du Travail, la Confédération internationale des Syndicats chrétiens, la Fédération syndicale internationale et l'Organisation internationale des Employeurs industriels. D'autre part, le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et le Gouvernement allemand ont demandé, conformément à l'article 73, n° 1, alinéa 3, du Règlement, à être admis soit à présenter un exposé écrit, soit à être entendus ; il a été fait droit à ces demandes. Les délais de la procédure écrite ont été fixés par deux ordonnances rendues respectivement les 27 mai et 6 septembre 1932 ; dans ces délais, la Cour a reçu des mémoires

merits, on December 10th next; as, however, a preliminary objection to jurisdiction had just been raised, that question must first be decided. The case would be ready for hearing, as far as concerns the said preliminary objection, on October 31st next;

(5) an appeal by the Czechoslovak Government against two judgments delivered on December 21st, 1931, by the Mixed Hungaro-Czechoslovak Arbitral Tribunal;

(6) a case between Norway and Denmark concerning the South-Eastern territory of Greenland;

(7) an appeal by the Czechoslovak Government against a judgment delivered on April 13th, 1932, by the Mixed Hungaro-Czechoslovak Arbitral Tribunal.

As regards the three last-named cases, the Court had reserved its right to fix, at a later date, the final time-limits for the written procedure; these time-limits would govern the dates upon which these cases would be ready for hearing.

The PRESIDENT observed that, among all the cases in the General List, the case relating to the Convention of 1919 concerning the employment of women during the night and the so-called Eastern Greenland case alone appeared, at the present moment, on the sessions list of this session; the Court would deal to-day with the case relating to the Convention of 1919 concerning the employment of women during the night.

He requested the Deputy-Registrar to read the Resolution of May 9th, 1932, by which the Council of the League of Nations decided to ask the Court for an advisory opinion on this subject.

The DEPUTY-REGISTRAR having read this Resolution, the PRESIDENT added that the request for an advisory opinion had been the subject of the customary notifications. It had been transmitted, under Article 73, No. 1, paragraph 2, of the Rules of Court, to the international organizations which were considered by the Court as likely to be able to furnish information on the question, namely the International Labour Organization, the International Confederation of Christian Trades Unions, the International Federation of Trades Unions and the International Organization of Industrial Employers. Furthermore, the Government of the United Kingdom of Great Britain and Northern Ireland and the German Government had asked, in accordance with Article 73, No. 1, paragraph 3, of the Rules of Court, to be permitted either to submit a written statement or to offer verbal observations; these requests had been allowed. The time-limits for the written procedure were fixed by two Orders, made respectively

écrits desdits Gouvernements et des trois premières organisations précitées.

Le Gouvernement allemand a désigné comme agent près la Cour dans la présente affaire le comte Julius de Zech-Burkersroda, envoyé extraordinaire et ministre plénipotentiaire d'Allemagne à La Haye, et comme agent-adjoint le Dr Johannes Feig, *Geheimer Regierungsrat* et chef de division au ministère du Travail du Reich.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a désigné comme agent sir Bertram Okeden Bircham, M.C., *Solicitor* du ministère du Travail, comme agent-adjoint M. Ernest Hamilton Richards, *Chief Clerk, Solicitor's Department*, ministère du Travail, et comme conseil M. Alexander Pandelli Fachiri, *Barrister-at-Law*.

L'Organisation internationale du Travail s'est fait représenter par M. Phelan, chef de la Division diplomatique du Bureau international du Travail, assisté par M. Morellet, conseiller juridique du Bureau international du Travail.

La Confédération internationale des Syndicats chrétiens a désigné pour la représenter son secrétaire général, M. Serrarens. La Fédération syndicale internationale s'est fait représenter par son secrétaire général, M. Schevenels.

Le Président constate la présence devant la Cour des agents et représentants des divers États ou organisations susmentionnés et ajoute que, les intéressés lui ayant fait connaître qu'ils étaient d'accord pour que le représentant de l'Organisation internationale du Travail prenne la parole le premier, et ensuite, dans l'ordre, les représentants des Gouvernements britannique et allemand et ceux de la Confédération internationale des Syndicats chrétiens et de la Fédération syndicale internationale, il donnera, appliquant par analogie au cas présent l'article 46 du Règlement de la Cour, la parole en premier lieu à M. Phelan, représentant de l'Organisation internationale du Travail.

M. PHELAN prononce l'exposé reproduit en annexe [1].

Le PRÉSIDENT donne la parole au conseil du Gouvernement britannique.

M. FACHIRI prononce l'exposé reproduit en annexe [2], et dont la suite, interrompue par la suspension de l'audience, est renvoyée à l'après-midi.

Au cours de cet exposé, le PRÉSIDENT donne la parole à sir Cecil Hurst, juge, pour une question.

[1] Voir p. 207.
[2] » » 215.

on May 27th and September 6th, 1932; the Court received written statements from the said Governments and from the three first-named of the above Organizations within the periods thus laid down.

The German Government had appointed as its Agent before the Court on the present case Count Julius von Zech-Burkersroda, Envoy Extraordinary and Minister Plenipotentiary of Germany at The Hague, and as its Deputy-Agent Dr. Johannes Feig, *Geheimer Regierungsrat* and head of a division in the Ministry of Labour of the Reich.

The Government of the United Kingdom of Great Britain and Northern Ireland had appointed as its Agent Sir Bertram Okeden Bircham, M.C., Solicitor to the Ministry of Labour, and as its Deputy-Agent Mr. Ernest Hamilton Richards, Chief Clerk, Solicitor's Department, Ministry of Labour, and as its Counsel Mr. Alexander Pandelli Fachiri, Barrister-at-Law.

The International Labour Organization was represented by Mr. Phelan and M. Morellet, respectively head of the Diplomatic Division of the International Labour Office, and Legal Adviser of the International Labour Office.

The International Confederation of Christian Trades Unions had appointed M. Serrarens, its secretary-general, to represent it. The International Federation of Trades Unions was represented by M. Schevenels, its secretary-general.

The President noted that the Agents and representatives of the different States and Organizations which he had mentioned were present in Court. As they had informed him of their agreement that the representative of the International Labour Organization should speak first, followed in turn by the representatives of the British and German Governments, and those of the International Confederation of Christian Trades Unions and the International Federation of Trades Unions, he would, applying by analogy Article 46 of the Rules of Court, call first upon Mr. Phelan, representative of the International Labour Organization.

Mr. PHELAN made the speech reproduced in the annex [1].

The PRESIDENT called upon Counsel for the British Government.

Mr. FACHIRI made the speech reproduced in the annex [2], the latter part of which was postponed to the afternoon sitting.

In the course of this speech, the PRESIDENT called upon Sir Cecil Hurst, judge, to put a question.

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[1] See p. 207.
[2] „ „ 215.

Sir CECIL HURST pose la question reproduite en annexe [1], à laquelle M. FACHIRI déclare qu'il répondra après avoir recueilli les renseignements nécessaires.

L'audience, interrompue à 13 heures, est reprise à 16 heures.

Le PRÉSIDENT donne la parole au conseil du Gouvernement britannique.

M. FACHIRI répond à la question posée par sir Cecil Hurst [2]. Il reprend ensuite et termine son exposé [3].

Le PRÉSIDENT donne la parole à l'agent-adjoint du Gouvernement allemand.

Le Dr FEIG présente l'exposé reproduit en annexe [4].

Le PRÉSIDENT donne la parole au représentant de la Confédération internationale des Syndicats chrétiens.

M. SERRARENS présente l'exposé reproduit en annexe [5].

Le PRÉSIDENT donne la parole au représentant de la Fédération syndicale internationale.

M. SCHEVENELS présente l'exposé reproduit en annexe [6].

Le PRÉSIDENT croit pouvoir constater qu'aucun des représentants des États ou organisations intéressés ne désire répliquer. Dans ces conditions, il prononce la clôture des débats oraux, sous réserve de la faculté, pour la Cour, de demander le cas échéant, et si elle le jugeait nécessaire, un complément d'information aux intéressés.

L'audience est levée à 18 h. 30.

Le Président de la Cour :
(*Signé*) M. ADATCI.

Le Greffier-adjoint de la Cour :
(*Signé*) J. JORSTAD.

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[1] Voir p. 226.
[2] » pp. 226-227.
[3] » p. 227.
[4] » » 237.
[5] » » 240.
[6] » » 246.

Sir CECIL HURST put the question reproduced in the annex [1], to which Mr. FACHIRI answered that he would reply after he had collected the necessary information.

The sitting was adjourned at 1 p.m. and resumed at 4 p.m.

The PRESIDENT called upon Counsel for the British Government.

Mr. FACHIRI replied to the question put by Sir Cecil Hurst [2] and then concluded his speech [3].

The PRESIDENT called upon the Deputy-Agent for the German Government.

Dr. FEIG made the statement annexed hereto [4].

The PRESIDENT called upon the representative of the International Confederation of Christian Trades Unions.

M. SERRARENS made the statement annexed hereto [5].

The PRESIDENT called upon the representative of the International Federation of Trades Unions.

M. SCHEVENELS made the statement annexed hereto [6].

The PRESIDENT said he understood that none of the representatives of the Governments or Organizations concerned wished to reply. He accordingly declared the oral proceedings closed, subject to the Court's right, if it saw fit, to ask for further information from the interested Parties.

The Court rose at 6.30 p.m.

(*Signed*) M. ADATCI,
President.

(*Signed*) J. JORSTAD,
Deputy-Registrar.

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[1] See p. 226.
[2] ,, pp. 226-227.
[3] ,, p. 227.
[4] ,, ,, 237.
[5] ,, ,, 240.
[6] ,, ,, 246.

SIXIÈME SÉANCE PUBLIQUE

tenue au Palais de la Paix, La Haye,
le mardi 15 novembre 1932, à 16 heures,
sous la présidence de M. Adatci, Président [1].

Présents : les membres de la Cour mentionnés au procès-verbal de la première séance ; M. Hammarskjöld, Greffier, reprend ses fonctions.

Le PRÉSIDENT déclare l'audience ouverte et prie le Greffier de mentionner la question à l'ordre du jour.

Le GREFFIER fait savoir que l'ordre du jour appelle le prononcé de l'avis consultatif demandé à la Cour par le Conseil de la Société des Nations sur la question suivante : .... [*Voir p.* 10.]

En vertu d'une application par analogie des dispositions de l'article 58 du Statut, les agents du Gouvernement allemand et du Gouvernement du Royaume-Uni de la Grande-Bretagne et de l'Irlande du Nord devant la Cour dans l'affaire ont été dûment prévenus ; ont été également prévenues l'Organisation internationale du Travail, la Fédération syndicale internationale et la Confédération internationale des Syndicats chrétiens.

Copie certifiée conforme de l'avis vient d'être remise entre les mains des représentants desdits États ou organisations.

Le PRÉSIDENT constate que, conformément à l'article 39 de son Statut, la Cour a décidé que c'est le texte français de l'avis consultatif qui fait foi.

Il donne lecture de ce texte [2].

Lecture du dispositif est donnée en anglais par le GREFFIER.

Le PRÉSIDENT ajoute que le baron Rolin-Jaequemyns, le comte Rostworowski, MM. Fromageot et Schücking, juges, déclarent que, dans leur opinion, l'ordre du jour, les documents et les procès-verbaux de la Conférence de Washington, portant référence à la Convention de Berne de 1906 sur l'interdiction du travail de nuit des femmes employées dans l'industrie, ne permettent pas de souscrire aux motifs et au dispositif du présent avis.

En outre, M. Anzilotti, juge, déclare ne pouvoir se rallier à l'avis donné par la Cour et, se prévalant du droit que lui confère l'article 71 du Règlement, joint audit avis l'exposé de son opinion dissidente.

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[1] Vingt-quatrième séance de la Cour.

[2] Voir *Publications de la Cour*, Série A/B, fasc. n° 50.

SIXTH PUBLIC SITTING

held at the Peace Palace, The Hague,
on Tuesday, November 15th, 1932, at 4 p.m.,
the President, M. Adatci, presiding [1].

Present: the members of Court mentioned in the minutes of the first sitting; M. Hammarskjöld, Registrar, resumed his functions.

The PRESIDENT declared the Court open, and requested the Registrar to state the subject on the Agenda.

The REGISTRAR stated that the subject on the Agenda was the delivery of the advisory opinion which the Court had been asked by the Council of the League of Nations to give upon the following question: .... [*See p.* 10.]

In virtue of Article 58 of the Statute, the provisions of which had been applied by analogy, due notice had been given to the Agents of the German Government and of the Government of the United Kingdom of Great Britain and Northern Ireland before the Court in the case. Notice had further been given to the International Labour Organization, the International Federation of Trades Unions and the International Confederation of Christian Trades Unions.

Certified true copies of the opinion had just been handed to the representatives of the aforesaid States or Organizations.

The PRESIDENT said that, in conformity with Article 39 of its Statute, the Court had decided that the French text of the advisory opinion should be the authoritative text.

The President read the French text [2].

The REGISTRAR read the operative clause in English.

The PRESIDENT added that Baron Rolin-Jaequemyns, Count Rostworowski, MM. Fromageot and Schücking, Judges, declared that, in their view, the agenda, documents and minutes of the Washington Conference which related to the Berne Convention of 1906 on the prohibition of night work for women employed in industry, did not permit them to subscribe to the grounds and operative clause of the opinion.

He further added that M. Anzilotti, Judge, declared that he could not agree with the opinion delivered by the Court and, availing himself of the right conferred upon him by Article 71 of the Rules of Court, had appended a statement of his dissenting opinion to the opinion of the Court.

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[1] Twenty-fourth meeting of the Court.

[2] See *Publications of the Court*, Series A./B., Fasc. No. 50.

Le Président demande à M. Anzilotti s'il désire donner lecture de son avis dissident.

M. ANZILOTTI déclare renoncer à donner lecture de cet avis.

Le PRÉSIDENT prononce la clôture de l'audience.

L'audience est levée à 16 h. 45. [*Signatures.*]

The President asked M. Anzilotti if he desired to read his dissenting opinion.

M. ANZILOTTI replied in the negative.

The PRESIDENT declared the hearing closed.

The Court rose at 4.45 p.m. [*Signatures.*]

ANNEXES AUX PROCÈS-VERBAUX

ANNEXES TO THE MINUTES.

1.—STATEMENT BY Mr. PHELAN

(REPRESENTING THE INTERNATIONAL LABOUR ORGANIZATION)

AT THE PUBLIC SITTING OF OCTOBER 14th, 1932 (MORNING).

Mr. President and Members of the Court,

I should like to begin by expressing to the Court the sincere regrets of the Director of the International Labour Office at his inability to appear before you to-day. Unfortunately, the Assembly is still in session in Geneva and, as it has under consideration questions of great importance to the International Labour Office, it has been impossible for the Director to make the journey to The Hague as had been his intention and his desire.

For the sixth time in the course of ten years, the International Labour Organization has come to ask the Court for guidance. In the cases previously submitted, the Court was asked to consider issues of a constitutional character—the representation of non-governmental elements in the International Labour Conference, the competence of the International Labour Organization, and the relations of Danzig with the Organization.

It may be thought that the question submitted for your decision to-day is of less importance, and it is true that no constitutional principle vitally affecting the working of the Organization is here involved; but the International Labour Organization nevertheless attaches very considerable importance to your decision in this case.

This is the first occasion on which, in pursuance of Article 423 of the Treaty of Versailles, the Court has been invited to give an opinion on the interpretation of an international Labour convention. Upon the principles upon which your decision in the present case is based, will depend in a large measure the interpretation of all the conventions adopted by the International Labour Conference both in the past and in the future. Your decision in this case will affect the application of the whole body of legal rules currently described, in a manner which may be inaccurate, but is none the less expressive, as international labour legislation.

The International Labour Office has already submitted to you a written statement, the object of which is to place before the Court, as impartially as possible, all the elements of the problem submitted for solution. It is in the same objective spirit that I desire to make a few remarks to-day.

The International Labour Office has always approached this question without preconceived ideas and has abstained from upholding *a priori* any particular thesis. It notes the existence of differing interpretations of the Convention concerning the employment of women during the night; it deplores these differences of interpretation, and it appears before the Court with the one object of facilitating the adoption of a solution of the problem which is legally satisfactory.

In this connection, I would take the liberty of reminding you that, while particular Members of the Organization have adopted conflicting interpretations of the Convention concerning the employment of women during the night, its collective organs, the Governing Body and the Conference, have never expressed any definite opinion upon the subject. The procedure for the revision of the Convention applied at the Fifteenth Session of the International Labour Conference in 1931 did not furnish any evidence of the opinion of the Conference upon the point in dispute. The question submitted to you is therefore unprejudiced by the decision of any other authority; it is for the Court to give a final opinion upon it.

The written statement submitted by the International Labour Office has, I hope, summarized all the essential features of the case before you. I shall therefore refrain from reviewing again the case as a whole, but the written statements submitted by the German and the British Governments would seem to call for certain observations.

As was indicated in the written statement submitted by the International Labour Office, there are two conflicting theses as to the sense of Article 3 of the Convention concerning the employment of women during the night. The one thesis relies on a strict literal interpretation of the text of this provision; the other relies on the intention of the authors of the Convention. The International Labour Office has already pointed out the difficulty of discovering whether the authors of the Convention had any definite intention as regards women occupying positions of supervision and management, and an examination of the statements submitted by the German and the British Governments would appear to furnish further evidence of the uncertainty of any conclusions in this regard.

The British Government, without taking any categorical view, considers it improbable "that the existence of women holding positions of management, etc., was entirely overlooked". It appears to be of opinion that the Conference probably

thought of the case and did not wish it to be excepted from the application of the Convention. The German Government admits "qu'au moment de conclure la Convention de Berne on n'ait pas encore songé à l'existence de femmes ingénieurs ou de femmes en positions dirigeantes et de surveillance. En 1919, par contre, il était tout indiqué d'y penser." Thus, the British and the German Governments are in agreement in thinking that it seems unlikely that the question of the position of women occupying positions of management was ignored, but the German Government draws a conclusion diametrically opposite to that reached by the British Government, for it adds: "*Il est d'autant plus invraisemblable que l'on ait alors songé* à étendre à ces personnes l'interdiction du travail de nuit."

I will refrain from commenting upon the merits of these opposing arguments and confine myself to noting that the different conclusions reached by the German and British Governments are sufficient proof of the difficulty of determining the real intention of the authors of the Convention. For its part, the International Labour Office believes it preferable to abandon any attempt to elucidate this point. It seems that all that can be said is, first, on the one hand, that if the Washington Conference had in mind this category of women, no sufficient evidence of its intention in regard to them can be found, and secondly, on the other hand, if the Washington Conference did not have them in mind, the question for decision is whether the Convention applies to a situation not contemplated at the time when it was adopted.

A further point also deserves attention. The written statement of the German Government remarks "qu'une interprétation trop large du terme *femmes* dans les pays qui ont ratifié la convention entraînerait une application inégale". This phrase suggests a misunderstanding which it would be desirable to remove. The inequalities of application to which the German Government draws attention are not the result of either too wide or too narrow an interpretation of the term "women", but of the simultaneous existence of two conflicting interpretations. The object of the present proceedings before the Court is to secure an authentic interpretation. Once such an interpretation is given in whatever sense, it will lead *ipso facto* to the disappearance of all divergences and inequalities, for States bound by the Convention will be under an obligation to take the necessary measures to give effect to the interpretation laid down by the Court.

In this connection, it is of interest to note the position in Great Britain. The British Government explains in its written statement that the legislation of Great Britain reproduces textually the provisions of the Convention, which is incorporated into its municipal law, and it holds that, in consequence, it

cannot exempt from the general prohibition of the employment of women at night women occupying positions of management. It is clear that if the Court were to adopt an interpretation of the Convention less exacting than that at present held by the British Government, the latter would be at liberty to apply the less exacting interpretation thus authoritatively given in any manner which takes into account both the rules of interpretation of English law and the scope of the Convention as defined for international purposes by the Court. This would lead, however, to the apparent paradox that, in order to be able to apply the Convention as authoritatively interpreted, it would be necessary to repeal its incorporation into the municipal law. The paradox is, however, more apparent than real. It deserves, however, to be noted, because the practice of incorporating the text of international Labour conventions into municipal laws has given rise to some misunderstanding and may give rise, if not properly understood, to difficulties in the future.

It is clear that a government does not sufficiently satisfy the obligations incurred by the ratification of a convention by a mere incorporation of the text of that convention into its national law; it may be that the principles of interpretation applied by its own courts of justice would prevent the application of the convention in accordance with an interpretation given by this Court, which alone, under Article 423 of the Treaty of Versailles, is competent. The obligation of a Member of the International Labour Organization which ratifies a convention is to secure the application of that convention as interpreted by this Court, and the fulfilment of that obligation is in general not furthered, and may be hindered, by the reproduction of the exact terms of the convention in municipal law.

There is one further observation which I should like to make upon the written statements submitted to the Court. The German Government explains in its statement that it would like to have settled the question of whether the Convention applies to women employed in commercial or office work, and mentions that this question has been submitted to the Governing Body of the International Labour Office with a view to the possibility of its being referred to the Court. It concludes its statement with the following phrase: "Pour le cas où ce recours aurait lieu prochainement, il serait à recommander de joindre ces deux questions pour amener une décision."

I feel that I am bound to point out to the Court that when the German Government suggested to the Governing Body that the two questions should be sent forward together with the request for an advisory opinion, the Governing Body did not feel able to accede to its request. It decided to send forward

the British question only and to reserve its decision on the German question. The present position, therefore, is that the Court has been invited to give an advisory opinion on the question raised by the British Government, and that the Governing Body has postponed until its October session its decision on the proposal of the German Government.

The advisory opinions already handed down by the Court —for example, Opinion No. 16, handed down on August 28th, 1928, in the case concerning the interpretation of the Greco-Turkish Agreement of December 1st, 1926 (p. 16), and the advisory opinion given on the 8th March last concerning the interpretation of the Greco-Bulgarian Agreement of December 9th, 1927 (General List No. 45, p. 87)—indicate that the Court is unlikely to give an opinion on any question which has not been submitted to it according to the rules governing its advisory competence. The German Government does not, indeed, propose that the Court should give any decision upon this new question now, but it suggests that the Court postpone consideration of the question now pending.

It is, of course, for the Court to decide whether it may find it possible to accede to this request of the German Government. The close relation between the question now before the Court and that which the German Government would like to have settled is undeniable, and on general grounds it might seem desirable that they should be joined and disposed of by a single decision. At the present stage of the proceedings, however, the Court is seized, in conformity with Article 14 of the Covenant of the League of Nations and with Article 423 of the Treaty of Versailles, of a well-defined question. There will be nothing to prevent the Court giving an opinion upon the question in which the German Government is interested if that question is submitted to it in due course, after its precise terms have been defined by the Governing Body. As I shall venture to attempt to show in a moment, the effect of the interpretation of the scope of one Labour convention may affect almost the whole body of existing international labour legislation, and for that reason a careful scrutiny by the Governing Body of the precise terms on which an advisory opinion is sought would seem to be an almost indispensable preliminary to any consultation. I should add that the Governing Body of the International Labour Office has not yet defined its attitude to the question referred to by the German Government, and may prefer to await the decision of the Court in the present case before so doing.

These are the brief remarks which I desire to make upon the merits of the particular case submitted to the Court, and I would ask that they should be considered in conjunction

with the written statement of the International Labour Office. I would desire, however, to add a few observations of a general character in view of the importance of the precedent which your decision will create and its inevitable repercussion upon the application of other international Labour conventions.

The Court has been invited to define the field of application *ratione personæ* of an international Labour convention. Now, any limitation of the scope of a Labour convention must be derived from one of two sources, either from Part XIII of the Treaty of Versailles—the general framework within which international Labour conventions are concluded—or from the Convention itself.

I do not deny that Part XIII, by setting certain general limits to the competence of the International Labour Organization, *ipso facto* limits the field of application of conventions adopted by the Organization; but I would add that this criterion of interpretation would not seem to have any application in the present case.

As the written statement submitted by the British Government very justly remarks, no question of competence arises—"it is hardly necessary to observe that there is no question as to the general competence of the International Labour Organization under Part XIII of the Treaty of Versailles to deal with persons in industrial employment holding positions of supervision or management and not ordinarily engaged in manual work".

Limitations of scope derived from a convention itself will generally be more precise than any limitation derived from Part XIII and are therefore of greater practical importance. They generally result from the text of a convention, it being common for conventions to include definitions, sometimes very detailed, of their field of application *ratione personæ*. In cases where the text contains no definition, it will be legitimate to consider the purpose of a convention in order to determine its scope, though in this last case the appreciation of the purpose of a convention cannot be based on arbitrary criteria, and the method employed must be an extremely prudent one.

But, though it may appear a simple matter to formulate these general principles, their practical application may give rise to considerable difficulty. Questions of labour regulation present problems of almost unlimited diversity and complexity, and not least in the sphere of the definition of the field in which any given regulation is to apply.

Thirty-three conventions have now been adopted by the International Labour Conference, and they differ considerably in the manner in which they define their scope.

It is impossible, of course, to classify them in any absolute way, but it may perhaps be useful if I attempt to indicate certain general characteristics according to which they may be grouped.

The first group consists of conventions the scope of which is incapable of definition *ratione personæ*. They impose an obligation to do certain things irrespective of the persons who are to benefit thereby. As an illustration I may mention the Convention concerning the marking of the weight on heavy packages transported by vessels. In such a case the problem of the scope of the convention *ratione personæ* cannot arise. This class of conventions, which is not very numerous, will not be affected by your decision in this case.

At the other end of the scale is a group of conventions in which the field of application *ratione personæ* is defined with considerable precision.

As an example I may quote the Convention on Seamen's Articles of Agreement, which applies as regards "every person employed or engaged in any capacity on board any vessel and entered on the ship's articles. It excludes masters, pilots, cadets and pupils on training ships and duly indentured apprentices, naval ratings and other persons in the permanent service of a government. The term 'master' includes every person having command and charge of a vessel except pilots." There are less than ten conventions giving detailed definitions of this kind, and the precision with which these conventions define their scope *ratione personæ* renders it unlikely that difficulties of interpretation of the kind at present before the Court will arise.

The majority of the conventions, however, fall into an intermediate group in which the scope of their application *ratione personæ* is defined in a more or less general way. Difficulties of interpretation as regards scope are liable to arise as regards conventions in this group, and it is to this group that the Convention which is the subject of the present proceedings belongs. This group contains some twenty conventions. I will not abuse the patience of the Court by attempting to analyse, or even to enumerate, the different formulæ which they employ. It will I hope be sufficient if I quote only a few examples.

Some of the formulæ in these conventions, although expressed in quite general terms, have a certain limitative character. For example, the Convention concerning workmen's compensation in agriculture applies to "all agricultural wage earners", and those who are not wage earners are thus excluded.

Contrasted with formulæ like this are other formulæ which are drafted in all-inclusive terms. For example, the Convention concerning the employment of women before and after childbirth states that "the term 'women' signifies any female

person irrespective of age or nationality, whether married or unmarried". This definition is worthy of special mention because it occurs in a convention adopted by the First Session of the International Labour Conference at the same time as the Convention concerning employment of women during the night.

The majority of the formulæ, however, employed in this third group of conventions are neither narrowly limitative nor all-inclusive. They are general formulæ which often define by a single word the persons covered. Thus the Washington Hours Convention applies to "persons employed" in certain "industrial undertakings", the Convention concerning the regulation of hours of work in commerce and offices to "persons employed" in certain "establishments", the Conventions designed for the protection of children and young persons to "children under the age of 14 years" and "young persons under 18 years of age". The Convention concerning the creation of minimum wage fixing machinery refers to "workers" employed in certain trades, and the Convention concerning forced or compulsory labour to "any person". There is thus nothing exceptional in the very general character of the words "women without distinction of age" by which the Convention concerning employment of women during the night defines its scope *ratione personæ*.

My object in thus recalling as briefly as possible the principal provisions defining the scope of the various international Labour conventions has been to stress the extent of the repercussions which the opinion given by the Court in the present case can scarcely fail to have. It should of course be added that, no matter how similar the terms in which different conventions are drafted, the scope of their provisions may depend upon considerations peculiar to individual cases. A mechanical uniformity of interpretation is neither necessary nor desirable, but the opinions of the Court carry such weight that the decision given in this particular case is certain to have a very definite influence upon the interpretation of all international Labour conventions. The International Labour Office therefore attaches very great importance to the decision which you are about to give.

These proceedings being advisory, the representative of the International Labour Organization has no right to submit conclusions in the strict sense of the term. I should simply like to recall that the International Labour Office, when interpreting conventions, has always attempted to observe two principles—that of not stretching the scope of a convention beyond the limits set by the text and by common sense, and that of taking care not to diminish, by admitting unnecessary

qualifications, the benefits which the workers are entitled to expect the conventions to secure for them.

The International Labour Organization can appreciate by experience the value of the opinions of the Court. As the Organization has grown and as its activity has extended, it has found in the decisions of the Court a solution of the most important difficulties of a legal character which it has encountered, and a series of rules which have guaranteed its development on a secure foundation. I need not say that in this case it awaits once more with complete confidence the decision of the highest international tribunal.

2.—STATEMENT BY Mr. ALEXANDER FACHIRI

(COUNSEL FOR THE BRITISH GOVERNMENT)

AT THE PUBLIC SITTINGS OF OCTOBER 14th, 1932.

May it please the Court. His Majesty's Government of the United Kingdom, on whose behalf I appear, have thought it desirable to be represented at these oral proceedings in order to lay before the Court somewhat more fully their views upon the question as to the interpretation of this Convention concerning night work of women.

The history of the matter is briefly indicated in the written statement filed by His Majesty's Government, and is fully explained in detail in the Memorial submitted by the International Labour Office. It is therefore unnecessary for me to repeat what is there set forth; I would merely say that the point in issue was, it will be remembered, first raised by the British Government in June 1930 when they proposed to the International Labour Organization that the Convention should be amended, and that, although there was a great difference of opinion as to the true meaning of the Convention, the proposal for amendment did not receive sufficient support for adoption, and that His Majesty's Government thereupon moved the Governing Body of the International Labour Office to ask the Council of the League to obtain from the Court an advisory opinion. I will, if I may, read once more the question set out on page 4 of the book of documents[1]:

> "Does the Convention concerning employment of women during the night, adopted in 1919 by the International Labour Conference, apply, in the industrial undertakings covered by the said Convention, to women who hold positions of supervision or management and are not ordinarily engaged in manual work?"

[1] P. 10 of this volume.

As appears from the documents already before the Court, the matter referred to has given rise to a practical difficulty, though it may not be one of first class importance. In my own country, Parliament has enacted the Washington Night Work Convention as it stands. It is part of our municipal law. The result is that, in applying that law according to its plain and express terms, women holding positions of supervision or management in industrial undertakings are excluded from night work. In some other countries the Convention is given a different meaning, and there those women are not regarded as being debarred from night work. It is not clear how far the particular question of women managers and supervisors is of practical importance in other countries at the present moment, although it seems most probable that it will become increasingly important as time goes on. It is not claimed that there are a large number affected to-day, even in England—although there are some; but it would not be right to regard the whole controversy as theoretical, still less trivial. There is a practical difficulty, be it large or small; but beyond that immediate practical difficulty there are issues of a more serious character, some of which have been indicated in the speech we have just had the pleasure of hearing.

One is the principle of equality in the application of international Labour conventions. It strikes at the very root of the system established under Part XIII of the Treaty of Versailles if the conventions adopted by the International Labour Conference are differently interpreted and applied differently.

Another issue involved is the danger that if this Convention is held not to apply to women in positions of supervision and management, the door will be opened to further derogation.

Finally—and this is perhaps the most important point—this case raises the whole question of the principles applicable to the construction of these conventions and, indeed, of international agreements generally. I do not dwell upon this point at the moment, but I shall have something to say on the subject in connection with the legal discussion of the case.

The question submitted to the Court is purely a question of the construction of a written instrument, the Convention of 1919. I beg the Court to be so good as to turn for a moment to that Convention, which is set out on page 27 of the book of documents[1]. If the Court will allow me, I will read not the whole but a few parts of this document.

If one looks at the preamble, one sees that it says: "The General Conference of the International Labour Organization"

[1] P. 44 of this volume.

and so on, "Having been convened" and so on, "Having decided upon the adoption of certain proposals with regard to 'women's employment: during the night', which is part of the third item in the agenda for the Washington meeting", and "Having determined that these proposals shall take the form of a draft international convention, Adopts" and so on. We then come to Article 1: "For the purpose of this Convention, the term 'industrial undertaking' includes particularly"—and then it goes on to enumerate various things in extremely wide terms, and it says: "industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished", and so on, and "construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway", and so on. Those terms are wide enough to include practically every industry, and the last paragraph says: "The competent authority in each country shall define the line of division which separates industry from commerce and agriculture."

Article 2 defines the duration of the term "night", or the application of that term. I need not read it; there is no dispute about that.

Article 3, which is the article immediately in question, says:

> "Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed."

That is the Article which the Court is asked to interpret.

I do not think I need read Article 4; it does not really throw any further light on the matter. It provides for certain exceptions in the case of *force majeure*.

Article 5 refers to special exceptions in the case of India and Siam.

Articles 6 and 7 provide that in certain cases where climate comes into play certain exceptions may be made.

Article 8 is not material, and I do not think I need read any more until I come to Article 15, which says: "The French and English texts of this Convention shall both be authentic." On that I would only remark that I agree with what the International Labour Organization say in their Memorial, namely, that the two texts in this case are really in complete correspondence, so that there is no light to be derived from a comparison between the French and the English texts.

The views of His Majesty's Government as to the construction of this document have already been indicated in their

written statement. The relevant article, Article 3, is absolutely plain, clear, and free from ambiguity. Its language admits of no interpretation, in our view, other than what the words say with the utmost simplicity and distinctness: "Women without distinction of age shall not be employed during the night in any .... industrial undertaking...." Taken by itself, this provision cannot be read as excluding any particular class of women or as including any exception other than the one expressly mentioned, namely, that regarding an undertaking in which only members of the same family are employed.

Is there anything in the context to affect this conclusion? I submit there is not a word in any part of the Convention which can possibly be read as suggesting that Article 3 is to be given any special or restricted sense. The preamble refers simply to women's employment; Article 1, as I have pointed out, defines industrial undertakings, and the other articles do not contain anything which is in any way inconsistent with, or in any way restricts the operation of, Article 3.

The Convention as a whole deals with the subject indicated in the preamble. It nowhere mentions manual workers or gives the slightest ground for any indication that it is in any way restricted to manual workers. I submit, therefore, that, as far as the terms of the Convention itself are concerned, there cannot be any doubt at all that the women mentioned in the question submitted to the Court are included among the women referred to in Article 3.

How, then, does it come about that differences of opinion exist as to the effect of the Convention? Those who consider that the Convention does not apply to women in supervisory and managerial posts base their view upon what is called the historical interpretation. The argument is set forth at page 175 of the International Labour Office Memorial, which, if I may say so, presents both sides of this case with great ability and impartiality, of which we have had a further example in the interesting speech we have just heard.

The historical argument appears broadly to be this, that the Washington Convention on night work for women is based upon, and as it were replaces, the Berne Convention of 1906, that the Berne Convention only applied to manual workers, and that therefore the Washington Convention must be read subject to the same limitation.

The first answer to this contention is that there is nothing whatever in the text of the Washington Convention to connect it with the Berne Convention, and, in the submission of His Majesty's Government, it is not permissible in these circumstances to refer to the Berne Convention for the purpose of construing the Washington Convention. In the opinion

of His Majesty's Government, it is a principle of the utmost importance, as they have had occasion more than once to explain to the Court, that international agreements of all kinds should be interpreted in accordance with their own provisions, without reference to extraneous documents or circumstances of doubtful relevance. When States adhere to an international treaty, they undertake the obligations therein laid down. The competent authorities, before ratifying, have to consider what it is that the State is engaging itself to, and in so doing they must have the greatest possible measure of certainty. It is of vital importance that all the Parties to a treaty should know where they stand, what it is they have undertaken to do or to abstain from doing. The only way in which this certainty can be attained is if the operation of the treaty is governed by the text and nothing but the text; otherwise international relations will remain undetermined, and the door will be opened to every kind of inequality and evasion. This point has repeatedly arisen in connection with the admission of preparatory work, as to which I shall have a word or two to say later; but, before discussing that, I beg the Court to consider this question in its simplest form.

Here is a convention perfectly clear in itself. It is self-contained and does not refer in any way on the face of it to the Berne Convention. Is the Washington Convention on the night work of women to be interpreted according to its own terms, or can the provisions of the Berne Convention be considered for the purpose of modifying the terms of the Washington Convention and reading into it something which is not there? I submit as a matter of legal principle that there is no justification for the latter course.

It may be useful to refer in this connection to one or two decisions of the Court. In the case relating to the jurisdiction of the European Commission of the Danube, Series B., No. 14, a question arose as to the relations between the Treaty of Versailles and the definitive Statute of the Danube. The Treaty of Versailles contained certain provisions as to the composition and powers of the Commission, and stipulated that the régime for the Danube should be laid down by a subsequent conference, which was in fact the Danube Conference which adopted the definitive Statute. It was contended before the Court that the result of this provision was to make the Treaty of Versailles the dominating instrument under whose mandate the Danube Conference was acting, so that the two treaties must be read together and any provisions of the latter treaty going beyond the mandate conferred by the earlier one must be regarded as *ultra vires*.

The Court rejected this contention in a short passage which I should like to read. It is at page 23. The Court said this:

"In the course of the present dispute, there has been much discussion as to whether the Conference which framed the Definitive Statute had authority to make any provisions modifying either the composition or the powers and functions of the European Commission, as laid down in the Treaty of Versailles, and as to whether the meaning and the scope of the relevant provisions of both the Treaty of Versailles and the Definitive Statute are the same or not. But in the opinion of the Court, as all the Governments concerned in the present dispute have signed and ratified both the Treaty of Versailles and the Definitive Statute, they cannot, as between themselves, contend that some of its provisions are void as being outside the mandate given to the Danube Conference under Article 349 of the Treaty of Versailles."

I submit that this passage supports my argument as to the inadmissibility of reading the Berne Convention with the Washington Convention. I recognize, of course, that the two cases are by no means identical and that the passage I have cited from the Court's opinion does not primarily refer to the interpretation of the Danube Statute but to the validity of its provisions. I do appeal, however, to the underlying principle that, where Parties have signed and ratified a treaty, its terms prevail irrespective of what was laid down in an earlier agreement between the same Parties.

The other case to which I would refer is that of the Oder Commission, Series A., No. 23, pages 19 to 22, where the subject of two closely related treaties was again in question. The Court there held that, notwithstanding the intimate and express connection between the Treaty of Versailles and the Barcelona Convention, the latter could not be invoked against a Party which had not ratified it. The reason why I refer to this is that several of the Parties to the Washington Convention on night work are not parties to the Berne Convention at all, and therefore, on this ground alone, it is difficult to see how, even if the two Conventions were expressly related to one another, which they are not, the Berne Convention could be appealed to for the purpose of interpreting the Washington Convention. Just as in the Oder case, the two Conventions here are what is generally described as of a legislative character. The provisions in question are technical and non-political, laying down general rules intended to regulate a particular subject for the whole international community. Obviously these rules must be the same for all; their interpretation must be arrived at on a basis which is applicable to all Parties and potential Parties equally.

I have endeavoured in the remarks I have just been making to show that, as a matter of general principle, there is no

warrant for the claim to interpret the Washington Convention on night work by reference to the Berne Convention, but it is necessary for me to deal with the argument based on preparatory work. It may be said: "Well, you may be right that there is nothing in the terms of the Washington Convention itself to link it up with the Berne Convention, but look at the discussions at the Washington Conference. These show what the true position was, and we are entitled to refer to those discussions for the purpose of showing the intention of the signatories of the Washington Convention."

This contention raises a point so often argued before the Court, a point to which, as I have already said, His Majesty's Government attaches the greatest importance; but, having regard to the principles laid down by the Court itself, I can deal with the matter very shortly. The Court has adopted a clear rule, enunciated not once but time and again, that where the text of a treaty is sufficiently clear in itself there is no occasion to have regard to preparatory work, and in such cases the text must be interpreted and applied according to its own terms.

I would refer in particular to the following cases: the Mosul case (Series B., No. 12, pp. 22 and 23); the Lotus case (Series A., No. 9, p. 16); and again, the Danube case (Series B., No. 14, p. 31). I will not take up the time of the Court by citing the passages, because the rule laid down is quite plain. It applies where the text itself is sufficiently clear, and I venture to assert that in none of those cases was the text clearer than, or indeed as clear as, in the present case. I should like to add that, although the rule adopted by the Court does not go so far as the principle of construction advocated by His Majesty's Government, it is nevertheless one which they consider very valuable as going some way to achieve the essential object, which is certainly of interpretation. I would earnestly urge that nothing should be done which could be treated as weakening or whittling down the Court's rule, and I therefore hope that the Court will re-affirm it in this case, where it is, we think, indisputably applicable.

His Majesty's Government therefore submit that the preparatory work of the Washington Convention is irrelevant and should not be regarded, but, as it has been referred to, I will say a few words on the subject in accordance with the practice in previous cases, and subject always to the reservation that this is without prejudice to the submission I have made.

The proceedings of the Conference relating to the Convention concerning the employment of women during the night are set out in the book of documents at pages 8 *et sqq.*[1] I have

[1] Pp. 15 *et sqq.* of this volume.

read this record, and I have been unable to find a single word bearing directly on the subject now before the Court. The question of women holding positions of supervision or management was never mentioned—I think that is common ground —nor was anything said which shows one way or the other what were the views of the delegates on that particular point or on the subject of non-manual workers generally. On the other hand, the discussions proceeded throughout on the footing that the regulation of night work was to apply to women in industry generally, without qualification or restriction.

So much for the general tenor of the debates. The point that is made by those who support the exclusion of these women in supervisory posts and so on from the Convention is that the Washington discussions show that the Convention is based upon the Berne Convention.

I beg the Court to be so good as to follow one or two passages on which this view is based. I have chosen passages which are, I think, the strongest in favour of the view that the discussions show that the Washington Conference took the Berne Convention as a basis. At page 21 of the book of documents[1] there appears the report of the Commission on the employment of women, which was the basis of the discussion before the full Conference. It is said there:

"No attempt is made in this report to deal with the question of employment of women by night in other than industrial occupations. In view of the limited time remaining at the disposal of the Conference, the Commission recognizes the necessity of avoiding any proposal likely to require prolonged discussion, and has confined its recommendations to a few points arising out of the accepted principle embodied in the Convention of Berne that women in industry shall not be employed during the night.

"We are in complete agreement with this principle and with the main lines of its expression in the Berne Convention of 1906. Careful examination of the terms of the Berne Convention has, however, convinced us that it requires some revision to make it an efficient international instrument at the present time, apart from and in addition to that redrafting of the formal articles providing for ratification, notification, and method of denunciation so evidently called for in the new situation created by the Covenant of the League of Nations. Thirteen years have passed since the Convention was signed in 1906. During that period great changes have taken place in industry, social standards have risen, and the relations between peoples have been profoundly modified by the war, with the result that the Convention no longer corresponds to

[1] P. 37 of this volume.

the needs and opinions of the time. The Conference has an opportunity to effect the necessary improvements and adjustments at this moment when it deals with the third item of the agenda prescribed by the Treaty of Peace.

"The Commission's proposed changes are few in number and leave the main provisions of the existing Convention untouched. It is, however, clear that it would be impracticable to attempt to modify a convention actually in force. The Commission therefore recommends that a new convention concerning the employment of women at night be put forth by the Conference to supersede the Berne Convention of 1906. This new convention should, in the opinion of the Commission, follow in outline the Berne Convention of 1906, effecting the following changes in the substantial articles of that Convention...."

The changes are not material for our purpose.

Then, if you will be good enough to turn to page 81, you will see given there an account of the discussion which took place on that report. I will read only a few passages. On page 81 the Rapporteur, Miss Smith, of Great Britain, says this in presenting the report to the Plenary Conference. It is the third paragraph:

"First, I would like to point out that the Committee, having decided to confine their considerations to the extension and application of the Convention of Berne, 1906, began by agreeing unanimously to support the principle embodied in that Convention. This is, I think, a significant action. Since the Convention of Berne came into force, a number of countries in which for years past it had not been customary and had not been legal to employ women at night have been forced by the circumstances of a great war to suspend for the time being their factory law and to admit women to night work. Nevertheless, the point of view that night work for women is undesirable, that its prohibition should be as far as possible universal, has not been weakened by war experience, and we had no opposition in our Committee to the request for support of the principle of the Convention of Berne.

"In examining the Convention it became at once clear that the change in the situation created by the establishment of the League of Nations would necessitate certain changes in the form of the Convention, and it also became clear that there was a strong feeling in favour of introducing into the Convention certain changes, or, perhaps to speak more correctly, of drafting a new convention in which certain changes

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[1] P. 15 of this volume.

should be embodied. It was felt that in one or two cases definitions lacked clearness and that in one instance public opinion had gone beyond the standard taken up in the Convention of Berne."

That refers to the number of people employed in an undertaking.

If you will look also at page 10[1]—I need not follow the whole discussion, which is not material to this particular point—you will find the Rapporteur sums up towards the end of the page:

"To sum up: The Committee has placed before the Conference changes, which it thinks advisable and are, indeed, demanded by industrial conditions, in the existing Convention of Berne. These changes, as you will have noticed, are not numerous. They leave the main lines of the Berne Convention untouched. All that we propose to do by means of them is simply to prolong those lines and to attain better and more complete methods of carrying out the objects for which the Berne Convention was framed.

"The Committee, therefore, ventures to recommend very earnestly to the Conference this report, and if the report with its draft amendments is accepted, then to send those amendments to the drafting committee with a request that they draw up a new convention on the lines of the Convention of Berne, embodying the amendments and at the same time adding the formal paragraphs on procedure and ratification which are now necessary. We trust, as a Committee, that the Conference will adopt our report and will make the necessary reference to the drafting committee.

"The Berne Convention represents the first step in international labour legislation. It was a valuable step. It was a step which has carried us some way along the road of the better protection of our working womanhood.

"It is for this Conference to go a step further to complete the work of those pioneers of 1906 and, in its much greater strength, in its far more representative character than any conference of those days, to carry on the effort to come closer to the goal."

You will see at page 21[2] that the report which was being discussed was unanimously adopted, and then the present Convention was drafted by the drafting committee and adopted without any further discussion by the full Conference. That is all from which I think one can find any light in the proceedings of the Washington Conference.

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[1] P. 18 of this volume.

[2] „ 32 „ „ „

Now, I agree that what I have just read shows that the Washington Conference took the Berne Convention as a starting point, and that the Washington Convention was designed to follow the general lines of the earlier instrument.

But where does that carry us? The very passages I have just read show how sweeping the Washington Conference wanted the prohibition of nightwork for women to be, and although it does not follow from what was said that the scope of the two Conventions as regards the persons covered was necessarily intended to be identical in every detail, the passages I have read also show that the Conference thought that the scope of the Berne Convention was sufficiently wide to achieve the purpose in view, namely, the prohibition of night work for women employed in industry, which was the subject with which they were dealing and with which they thought the Berne Convention dealt—and in this, I submit, they were perfectly right.

That makes it necessary, I am afraid, to ask the Court to look for a moment or two at the Berne Convention, and that will be found at page 25 of this same book[1]. Again, I do not want to weary you by reading it all, but if you will look at Article 1 you will find that it says: "Night work in industrial employment shall be prohibited for all women without distinction of age, with the exceptions hereinafter provided for", and then comes the definition of industrial undertakings, which is similar to, but not identical with, that in the Washington Convention. The further articles are on the same general lines, though with modifications, as the Washington Convention on night work. If I may look at the French text, which is the only authentic text in this case, it says: "Le travail industriel de nuit sera interdit à toutes les femmes, sans distinction d'âge, sous réserve des exceptions prévues ci-après." The exceptions have nothing to do with the present point; they concern the cases where only members of the family are employed and so on. There is nothing on the face of that Convention to exclude women holding positions of supervision or management and not ordinarily employed in manual work. I think it has been somewhat faintly suggested that the words "*travail industriel de nuit*" are not applicable to work of this nature, but I submit that it is impossible to hold that persons engaged in supervising and managing the work in a factory, a power-station or a mine, are not engaged in industrial work. Moreover, the very title of the Berne Convention shows the scope of the phrase; it says in the French text: "Convention internationale de Berne

[1] P. 41 of this volume.

de 1906 sur l'interdiction du travail de nuit des femmes employées dans l'industrie."

Le PRÉSIDENT. — Je donne la parole à sir Cecil Hurst, qui désire poser une question au conseil du Gouvernement britannique.

Sir CECIL HURST.—You referred the Court, in the latter part of your argument, to the text of the report that appears on page 21 of the book of documents [1], the report that begins at the bottom of that page. There is a sentence there which reads: "No attempt is made in this report to deal with the question of employment of women by night in other than industrial occupations." Have you noticed that that sentence is omitted from the French text? Can you tell me which is the correct text, and whether you attach any importance to that sentence?

Mr. FACHIRI.—I had not noticed it, and offhand I should not attribute any special importance to it.

Sir CECIL HURST.—You would not?

Mr. FACHIRI.—No, not offhand, but I am afraid I had not noticed it. It does not seem to me to be relevant to our particular point.

Sir CECIL HURST.—Do you know which is the official text, or are they both official?

Mr. FACHIRI.—All I know is that the Rapporteur was English, and I imagine the English text would be the original one, although both are official. Miss Constance Smith was the Rapporteur.

Le PRÉSIDENT. — Je voudrais rappeler au conseil du Gouvernement britannique qu'il a tout loisir de répondre plus tard, au moment où il aura des renseignements certains.

Mr. FACHIRI.—Certainly. I will ask my friends, who know more about what happened at Washington than I do, and then, perhaps, I shall be able to answer the question more accurately.

[*Public sitting of October 14th, 1932, afternoon.*]

Before resuming my argument, perhaps the Court will allow me to answer the question which Sir Cecil Hurst was good enough to put to me. I have ascertained that the original French text of the report of the Commission which is set out on page 21 [1] is as it is here. This is a correct reproduction of

[1] P. 37 of this volume.

both the English and French texts. In other words, the two texts do not correspond. The French text omits the particular sentence referred to. How that came about I do not know exactly, except I am told that they were rather in a hurry sometimes at Washington. Personally, I do not attach much importance to the sentence which is omitted in the French text. It was common ground that the Commission was only dealing with employment in industry, and I think all that sentence does is to say so. It comes to the same thing as what appears in the next sentence, where they speak of accepting the principle that women in industry shall not be employed at night. I read the two sentences as meaning the same thing.

Before the adjournment I had drawn attention to the terms of the Berne Convention. I may mention that the preamble of the Berne Convention is omitted from the text which is set out on page 25 of the book of documents [1]; and although this presumably means that it was not before the Washington Conference, I ought perhaps to call attention to it, because the first phrase might possibly be cited against me. I have here the records of the Berne Conference, and I find the Convention has a preamble which says, after setting out the High Contracting Parties:

> "Désirant faciliter le développement de la protection ouvrière par l'adoption de dispositions communes,
>
> Ont résolu de conclure à cet effet une convention concernant le travail de nuit des femmes employées dans l'industrie, et ont nommé pour leurs plénipotentiaires, savoir:"

I do not think that the conception indicated by the term "protection ouvrière" excludes non-manual workers, particularly when read with the next phrase, which is also in the preamble before the operative part: "Ont résolu de conclure à cet effet une convention concernant le travail de nuit des femmes employées dans l'industrie".

Read together I do not think the first phrase excludes non-manual workers, as I say; but even if it did, it is to be noticed that the first phrase is not restrictive at all. There is no inconsistency between absolute prohibition of night work for all women and the development of protection for manual workers, assuming that to be the meaning. Moreover, apart from this, a description of the general object of an instrument in the preamble cannot be used to cut down a description in clear and categorical language in the body of the

[1] P. 41 of this volume.

document. No doubt the main object of the Berne Convention —and for that matter of the Washington Convention—was to prohibit the manual labour of women during the night; but it by no means follows that the prohibition does not incidentally extend to other categories of employees.

I hope I have succeeded in showing that the preparatory work of the Washington Night Work for Women Convention is in no way inconsistent with the text of the document itself. But the exponents of the historical school are not content with citing the proceedings of the Washington Conference. They want to call in aid the preparatory work of the Berne Convention. They recognize, I think, that there is nothing in the Washington discussions or on the face of the Berne Convention to displace the plain meaning of the prohibition clause in the Washington Convention, and so they seek to go one step further back and see what the framers of the Berne Convention meant but did not say. This I submit is really reducing this method of interpretation to an absurdity. I need not however pause long to discuss it, for besides the fact that the same considerations are applicable as in the case of the Washington preparatory work, reference to the Berne discussions is precluded by another and fundamental objection.

I have made a list of the States participating in the Berne Conference and in the Washington Conference, which, if the Court will allow me, I will read, so that it may be on the shorthand note. The States represented at the diplomatic Conference and who signed the Convention of Berne were the following: Germany, Austria-Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, Luxemburg, Netherlands, Portugal, Sweden and Switzerland. The States which ratified that Convention were the following: Germany, Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, Netherlands, Portugal, Sweden and Switzerland. There were thirteen who signed and eleven who ratified.

At the Washington Conference there were no less than thirty-nine States which took part in the discussions of this particular night work for women Convention. I will not trouble the Court to read them all. They were practically all the States who were members of the International Labour Organization at that time, and all those States, I think, voted in favour of the Convention. The following States are those which have ratified the Washington Convention: Albania, Austria, Belgium, Bulgaria, Chile, Cuba, Czechoslovakia, Esthonia, France, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Lithuania, Luxemburg, Netherlands, Portugal, Roumania, South Africa, Switzerland and Yugoslavia—twenty-three. Thus it is obvious that a large number of States took part in the Washington Conference who were not represented

at the Berne Conference, and were not parties to the Berne Convention. Moreover, as regards the actual Parties to the Washington Convention, Bulgaria, Chile, Cuba, Czechoslovakia, Esthonia, Greece, Lithuania, Roumania and Yugoslavia, not to speak of India, the Irish Free State and South Africa, had nothing whatever to do with the Berne Conference or with the Berne Convention.

In these circumstances, the preparatory work of the Berne Convention is inadmissible under the Court's decision in the Oder case, Series A., No. 23, page 41. The Court will remember that the point arose there as to whether the preparatory work of the Treaty of Versailles could be referred to, and the Court ruled by a separate order that it was inadmissible on the ground that certain Parties in the case did not take part in the Conference which negotiated the treaty.

Perhaps I may just read a short passage on page 42 of the Oder case. The order says:

> "Whereas three of the Parties concerned in the present case did not take part in the work of the Conference which prepared the Treaty of Versailles; as, accordingly, the record of this work cannot be used to determine, in so far as they are concerned, the import of the Treaty; ....
>
> Whereas, in any particular case, no account can be taken of evidence which is not admissible in respect of certain of the Parties to that case; ....
>
> *Rules* that the Minutes of the Commission on Ports, Waterways and Railways of the Conference which prepared the Treaty of Versailles shall be excluded as evidence from the proceedings in the present case."

It is true that there are, strictly speaking, no Parties in the present case, but all the Parties to the Washington Night Work Convention are interested in the construction put upon it by the Court, so that the principle is the same. I submit that it is obviously impossible to interpret the Convention as it applies, say, to the United Kingdom by reference to the proceedings at Berne, and as it applies, say, to Bulgaria which took no part in those proceedings without such reference. Even apart from the legal objection, such a course is ruled out by practical considerations, for the application of the two methods of interpretation might, in theory, lead to two different interpretations of the scope of the Convention whereas it is admittedly of the essence of this international labour legislation that it should apply equally to all the countries which have accepted it.

I may add that here again, although my Government feel bound to take the formal objection, because of the important

principle involved, there is little or nothing in the proceedings of the Berne Conference which assists the other side. The German Government rely upon the fact that the claims put forward by the International Association for the Legal Protection of Workers preliminary to that Conference related to *ouvrières*, and it is no doubt true that the main preoccupation of all concerned was with manual workers; but there is nothing to show any intention to exclude non-manual workers.

It is interesting to note in this connection what was the basis of discussion upon which the Diplomatic Conference worked. I have here a complete record of the Berne Conference, and at page 55 it is said:

> "*Article* 2. — Les délibérations ont lieu sur la base de la note adressée le 14 juin 1906 par le Conseil fédéral suisse aux États participants à la Conférence."

The note there referred to is set out on page 24, and it is accompanied by a draft convention which is very much like the ultimate Convention adopted. There is not a word in this note or in that draft to limit the generality of the term *femmes*. In an earlier note of the International Association there appears the sentence: "Interdiction, pour les femmes, du travail industriel", and then an explanation: "Sous le terme de « femmes », on doit entendre toutes les ouvrières, sans distinction d'âge." I would submit that even this should not be read limitatively, but it is to be observed that this note did not form part of the basis of discussion. In view of certain statements which have been made, I would ask the Court to take special notice of this fact. If one is going into the preparatory work of the Berne Convention at all, which I submit one should not, it is necessary to distinguish between the preliminary work of the technical conference, and the diplomatic conference.

In general, upon this question of the scope of the Berne Convention, I think it is really fair to say that if the Court were now interpreting that Convention (which it is not) and were interpreting it in the full light of the preparatory work, there would be nothing in that preparatory work to justify a limitation being read into the general prohibition of night work in industrial employment for all women contained in Article 1 of that Convention.

The supporters of a restrictive interpretation of the Washington Night Work Convention rely upon one more argument, namely, what is described as the practice of States under the Convention. I do not understand that by "practice" they mean that actual cases of women holding positions of supervision or management have been dealt with in a particular way, because it is common ground that the existence of this particular class

of women is recent and confined at present to one or two countries. But what appears to be suggested is that action has been taken in certain countries which shows that the governments concerned did not regard the Convention as applying to employees of this kind.

It may be well to examine for a moment what the facts before the Court are. A summary of legislation in seventeen countries which have ratified the Washington Convention is given on page 40 of the book of documents [1]. From this it appears that in all but three the laws passed for giving effect to the Convention extend, on the face of them, to all women. Germany is not included in this list, but we possess in her case fuller details of the position which are contained in the annex to the written statement of the German Government. This shows that the German law passed to give effect to the Berne Convention allows an exception in the case of non-manual workers. Germany has not ratified the Washington Night Work Convention, but the Bill proposed for giving effect to it excepts "salaried employees" generally. In the United Kingdom it is of course notorious that the Employment of Young Persons and Children Act of 1920 applies to all women, and under the Factories Acts which were in force at the time, and after the time, of the Berne Convention there was equally no exception laid down for any category of women. They were all included.

Apart from these details as to legislation, all we have is a number of statements of the opinions held in different countries as to the scope of the Washington Night Work Convention. I should not have thought that these statements were of much value under any circumstances as showing a practice, but however that may be the opinions are divergent. Some governments say the Convention applies to women in posts of supervision and management. Others say there are other exceptions. Others, again, say that it applies to all women without exception. It is obvious therefore that this so-called practice carries one no further.

The Court has itself considered the question of the bearing of facts subsequent to a treaty upon its interpretation in two or three cases—Series B., Nos. 2 and 3, page 39; Series B., No. 12, page 54, and Series B., No. 15, page 8. In the first case the relevance of subsequent facts seems to be limited to cases where the treaty is ambiguous, but in the other two cases the Court lays down the principle that the attitude adopted by the Parties, and the manner in which they have applied a treaty, may be material as throwing light on their intention when they signed it. But these cases show, as is indeed

[1] P. 66 of this volume.

obvious, that in order to have relevance for this purpose, the facts relied upon must show a common intention on the part of both sides. It is of no assistance at all in construing a treaty to find that one Party by its subsequent conduct, and still less by mere statement, seems to have interpreted it in one way and another Party in another way.

I think I have now dealt with the so-called historical argument, and before sitting down I will beg the Court to be so good as to return once more to the document they have been asked to interpret, and to consider what is the answer to the question propounded by the Council in the light of that document.

The interpretation of His Majesty's Government has been described as literal, and the description implies a certain amount of criticism. The suggestion is sometimes made that we in England take a narrow, legalistic view founded upon our peculiar system of law, which is in contrast with the more liberal principles of, say, Roman law. I submit with respect that this opinion is quite mistaken. As I shall endeavour to show, the construction which my Government advocates is not the result of any exclusively English rules, but the result of what, if I may be permitted to do so, I would call common sense, upon which sound principles of law everywhere are based. Where Parties draw up an agreement, it is to be presumed that they say what they mean, and this is the more probable where the Parties concerned are not private individuals acting, it may be, in haste and without proper advice, but highly qualified government and other experts representing great countries and acting with all deliberation under a full sense of responsibility. Further, as I have already remarked, a convention like the one in question has much analogy to legislation, so that it is material to bear in mind also in what manner legislative enactments are wont to be interpreted.

The first canon of construction which is recognized everywhere is that you should interpret the words of a document according to the intention of its authors, and in order to ascertain this it is obviously necessary first of all to consider the particular words under discussion, but it is also permissible and necessary to consider the context and the objects of the agreement or law, and the surrounding circumstances. If the Washington Convention is interpreted in this way, what do we find? The purpose of the Convention is in fact, and is stated to be, to regulate the employment of women during the night. "Night" is defined; certain conditions are laid down as to the kind of undertakings to which it is to apply; certain exemptions are allowed in special cases. But with regard to the class of persons aimed at, there is no restriction whatsoever based upon the nature of the work they are engaged in. Women, without distinction of age, are not to be employed

during the night in any industrial undertaking. This accords with the declared object of the Convention, and there is nothing either in the text or in the purpose of the first International Labour Conference which is in the least degree inconsistent with the intention that the words should have their natural meaning.

The German Government contend that the very generality of the term "women" necessitates some qualification being read into Article 3, because if this is not done results which are absurd and which could never have been intended would follow. They suggest in their written statement that women *employers* might be included, but this overlooks the fact that Article 3 of the Convention only applies to women *employed* in industrial undertakings. They say also that the manager of a company would be included. If the work of the company was industrial, that may very well be, but I can see no absurdity in this, nor can I see that it would necessarily be contrary to the object of the Convention or the intentions of its authors.

We know from the examination of the preparatory work of the Washington Convention that in fact the position of the class of women now in question, admittedly a very small one, was not discussed. The reason for this may have been merely that at that time it did not seem worth while to anyone to except this class, or again the reason may have been that the case of these women was not contemplated at all. We do not know. If the first explanation is correct, obviously there is no ground for altering the terms laid down by the Parties; but let us assume, for the sake of argument, that the second explanation is the true one; that is to say, that they were never thought of at all.

It is plain from the great divergences of views expressed when the question of revision was raised, that we cannot even guess how the question of the application of the Convention to these women would have been resolved if it had been discussed at the Washington Conference. I submit that this demonstrates conclusively how inadmissible is the thesis put forward on the other side, for it amounts to this, that the Court is invited to make a new contract containing terms which the Parties never contemplated and which it is impossible to say they would have accepted if they had.

I submit there is no justification at all for reading into Article 3 any such restriction as is proposed, not only because the language of the Convention is clear and unequivocal on this point, but because, even if it were not, no term or condition can be implied into a document unless it appears that the Parties must have intended such a term to be part of the agreement, and further that it is necessary to make

the contract effective. These are fundamental principles of law and of common sense, and neither condition is present in this case.

I said a moment ago that the rules of construction which I am advocating are not peculiar to our law and, with the Court's permission, I will cite one or two short passages from a recognized authority in French Law. I have chosen this because I am familiar with the language, but I have no doubt that similar principles are to be found enunciated by German and other authorities. These citations are quite short, and are taken from Dalloz, *Répertoire méthodique et alphabétique*, 1860, Volume 33, title "Obligations", Chapter V, "De l'Interprétation des Conventions". Article 849 says:

"D'abord, lorsque les conventions ne présentent aucun doute dans leur rédaction, les juges ne peuvent qu'en ordonner l'exécution; ils ne peuvent les modifier par la recherche de l'intention: *Cum in verbis nulla ambiguitas est, non debet admittere voluntatis quæstio.* L'article 1156 (Code Napoléon), portant qu'il faut voir l'intention plutôt que s'attacher au sens littéral des termes, ne concerne que les actes ou les expressions de l'acte laissant du doute....

"Il a été jugé en ce sens:

"1) que des actes dont les dispositions sont claires ne sauraient raisonnablement fournir matière à interprétation....

"2) que, lorsque la convention est claire, positive, et ne peut donner lieu à aucune équivoque, les juges ne peuvent la réformer sous prétexte de lui donner une interprétation plus convenable....

"3) que, quand une convention est claire et précise, il n'est pas permis aux tribunaux de la modifier, sous prétexte d'intention présumée des Parties ou de considérations de temps et de lieu essentiellement variables."

Article 850:

"Mais lorsqu'il y a doute résultant des expressions employées ou du rapprochement de diverses clauses de la convention, dans ce cas, pour suppléer à l'ambiguïté, à l'insuffisance de la rédaction des contrats, la loi a indiqué quelques règles, qui ont été copiées dans Pothier, qui lui-même les avait empruntées du droit romain."

Article 856:

"*Première règle.* C'est d'abord dans les termes des actes qu'il faut chercher l'intention, et les mots doivent être entendus dans le sens consacré par l'usage général."

The second, third and fourth rules deal with ambiguous clauses, and the fifth, with customary clauses, and they are not material. The sixth rule is as follows:

"Toutes les clauses des conventions s'interprètent les unes par les autres, en donnant à chacune le sens qui résulte de l'acte entier."

The seventh rule is not material, but the eighth I should like to read:

"Quelque généraux que soient les termes dans lesquels une convention est conçue, elle ne comprend que les choses sur lesquelles il paraît que les Parties se sont proposé de contracter."

Some cases are cited in support of that, from which it appears that the rule is a narrow one and applies only where a restriction is necessarily implied from the nature of the case. It is interesting, however, to observe that a decision cited in a more recent edition under this head states this:

> "Cependant, si l'objet de la convention est une universalité de choses, elle comprend toutes les choses particulières qui composaient cette universalité, même celles dont les Parties n'avaient pas connaissance."

That is in Dalloz, *Répertoire pratique*, 1912, Volume III, title "Contrats", Article 481.

I should like to add that in Dalloz, *Répertoire pratique*, 1915, Volume VII, title "Lois et Décrets", it says this:

"Il n'y a lieu à interprétation des lois qu'autant que leur rédaction est obscure ou ambiguë. Quand la loi est claire, il n'est pas permis d'en éluder la lettre sous prétexte d'en pénétrer l'esprit. La présomption du juge ne doit pas être mise à la place de la présomption de la loi.

"Il n'est pas permis de distinguer lorsque la loi ne distingue pas; les exceptions qui ne sont pas dans la loi ne doivent pas être suppléées.

"Les textes visés dans le préambule d'une loi peuvent servir à l'expliquer, mais non à contrarier ou restreindre le sens de cette loi quand ses dispositions sont claires et formelles dans leur généralité, ni à distinguer là où la loi ne distingue pas."

"Une disposition générale ne peut pas, en principe, être restreinte dans son application par les motifs particuliers à raison desquels elle a été édictée."

There is only one more point. As has been observed in the written pleadings, the Washington Hours Convention, which was adopted at the same time as the Night Work Convention, contains a clause to which I should like to draw attention, namely, Article 2 (*a*):

> "The provisions of this Convention shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity."

This shows, I submit, that the Washington Conference realized perfectly well that, if an exception was to be made from a general prohibition, it must be expressly stipulated; and this clause in the Hours Convention therefore confirms in a striking manner the view that Article 3 of the Night Work Convention was intended to apply to all women without exception.

In order to avoid the possibility of misunderstanding, I should perhaps say that, in the opinion of my Government, it is not possible to deal with the question before the Court in the manner proposed by the International Federation of Trade Unions, namely, to say that the Convention applies to women holding positions of supervision, but not to those holding positions of management. This appears to be a mere compromise, incompatible with the application of legal considerations by which alone this Court is guided.

Further, I would ask the Court to bear in mind the fact that a proposal has been made by the German Government, and is now under examination, for seeking an advisory opinion from this Court upon the question of whether the Washington Night Work Convention applies to women engaged in commercial work, office work, or other similar work. Mr. Phelan this morning dealt with the general legal position as regards the possibility of the Court dealing with this question now. I say nothing more as to that, because I feel sure that the Court would never contemplate the possibility of giving an opinion upon a question not actually referred to it; but I should like to say, if I may, that the question raised by the German Government involves points which are different from those in the present case, points which require separate consideration and argument, and it would of course be undesirable that the Court's present opinion should, even indirectly, in any way prejudice the answer to that question.

In conclusion, I should like again to emphasize the underlying importance of this case, which consists in its effect as a precedent. I desire to associate myself with what was said by Mr. Phelan on this subject, but I would go even further and say that it is not only Labour conventions, but all treaties, that may be affected. It has never been more essential than it is to-day that international engagements should be faithfully and strictly carried out, and it is one of the functions of this great Court to further that object. Your decisions are treated everywhere as authoritative expositions of international law, and it would be indeed unfortunate if on some future occasion, when there may be some vital issue at stake, it should be possible for this case to be appealed to as showing that, no matter how absolute and general the provisions of a treaty may be, it is always possible,

by a process of interpretation, to imply an exception or reservation of some kind or other.

For those reasons, in addition to those given in their written statement, His Majesty's Government invite the Court to answer the question before it in the affirmative.

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3. — EXPOSÉ DE M. LE Dr FEIG

(AGENT-ADJOINT DU GOUVERNEMENT ALLEMAND)

A LA SÉANCE PUBLIQUE DU 14 OCTOBRE 1932 (APRÈS-MIDI).

Monsieur le Président, Messieurs les Juges,

Je n'ai pas l'intention d'ajouter beaucoup aux explications orales et écrites données jusqu'ici. Le Gouvernement allemand rencontre, dans la question de l'interprétation de la Convention concernant le travail de nuit des femmes, les mêmes difficultés que le Gouvernement de Grande-Bretagne. Il est vrai que, jusqu'ici, il n'a pas ratifié la Convention de Washington. Mais il a l'intention de le faire, et ne le peut pas s'il est donné à la convention une interprétation trop large. L'attitude du Gouvernement allemand se distingue de celle du Gouvernement anglais en ce qu'il donne lui-même à la convention une interprétation en réalité plus étroite que le Gouvernement anglais. Il est en cela positivement d'accord avec un grand nombre d'autres gouvernements, parmi lesquels il s'en trouve également qui ont déjà ratifié la convention.

Le Gouvernement allemand a exposé par écrit son point de vue juridique et s'en est rapporté à ce sujet en grande partie aux explications que le Bureau international du Travail a données dans son Mémoire pour exposer la thèse historique. Je ne vais pas répéter ici ces explications, mais appuyer encore sur un point qui, sans doute, est également de nature historique.

Tandis que, depuis environ les vingt dernières années du siècle précédent, on désigne continuellement l'ensemble des mesures qui servent à protéger l'ouvrier contre les dangers auxquels l'exposent les procédés de travail modernes, par les mots de « protection des ouvriers » ou « protection ouvrière », on n'a pas, pour la désignation des sous-groupes d'ouvriers pour lesquels sont prises des mesures de protection spéciales précisément parce qu'il ne s'agissait que de sous-groupes de l'ensemble des ouvriers, employé le mot d'« ouvriers ». Mais, tant dans la langue française que dans la langue anglaise et dans la langue allemande, et, autant que je sache, également dans toutes les autres langues du monde civilisé, on

a constamment parlé de protection des enfants, des jeunes gens et des femmes.

Il n'est donc pas exact que le mot « femmes », dans la Convention de Berne comme dans celle de Washington, ne contînt aucune sorte de restriction. Bien plus, ce mot, en matière de protection des ouvriers, ne signifie-t-il, d'après l'usage qui domine, jamais autre chose que « ouvriers féminins » ? En réalité, ceux qui, dans le texte des conventions, interprètent le mot « femmes » dans le sens large ne le veulent non plus interpréter littéralement. Car dans l'interprétation littérale y étaient compris également les patrons féminins qui, sans doute, exercent une activité dans leurs entreprises, et le Mémoire de la Fédération syndicale internationale veut en excepter encore un groupe plus grand, notamment les femmes qui occupent des postes de direction. Mais, dès qu'on se met à faire des exceptions, toute la thèse de l'interprétation au pied de la lettre est ébranlée, et il ne reste plus que la thèse historique.

Mais cette thèse historique est en même temps la thèse de la raison.

Cela se voit lorsqu'on envisage l'intérêt pratique de la question, qui devient d'année en année plus importante : la mise de la femme sur un pied d'égalité avec l'homme est demeurée longtemps une revendication purement théorique sur le terrain économique, et même, depuis sa complète réalisation dans le système du droit, elle n'existait encore, économiquement parlant, que sur le papier. Cela est encore le cas aujourd'hui dans beaucoup de pays ; cela explique pourquoi plusieurs de ces pays n'éprouvent pas encore le besoin de résoudre la question dont s'occupe actuellement la Cour permanente de Justice internationale.

Dans d'autres pays, par contre, les femmes ont déjà envahi de fait de nombreuses carrières qui, jadis, semblaient réservées aux hommes. Songez aux femmes exerçant la profession d'ingénieur, de chimiste, d'architecte, de rédacteur. Serait-ce donc effectivement défendu par la convention que la rédactrice employée dans une imprimerie, tout comme ses collègues masculins, collabore la nuit à la composition d'un journal du matin ? Ou qu'une chimiste, qui doit surveiller une opération chimique qui dure plus longtemps que les heures du travail pendant le jour, en soit empêchée ? Peut-on supposer que la Conférence de Washington ait voulu quelque chose de si insensé ? Que, pour les femmes dans des positions comme celles que nous venons de nommer, il ne soit pas besoin de défendre le travail de nuit pour des motifs de protection des ouvriers, cela tombe sous le sens. Mais, même pour des femmes à qui ne sont pas confiées des positions si importantes ni des postes de surveillance ou de direction, une défense

de travail de nuit serait absolument hors de saison. Quand il s'agit du travail de nuit, on songe avant tout au cas pas fréquent où on travaille réellement durant toute la nuit. Mais il y a également travail de nuit lorsqu'on travaille entre dix et onze heures du soir. Si l'on admet que pareil travail de nuit est défendu aux employées mentionnées ci-dessus, il sera impossible que, à certain jour où il y a à expédier de nombreuses et urgentes affaires, ou où ont eu *lieu* d'importantes réunions, le directeur de fabrique dicte, le soir, à sa secrétaire, une lettre ou engage une conversation téléphonique avec le concours de la téléphoniste de l'entreprise.

J'ai invoqué ces derniers exemples quoiqu'il s'agisse ici de femmes occupant des situations qui n'appartiennent pas aux postes de surveillance ou de direction, situations auxquelles ne se rapporte donc pas la question posée par le Gouvernement de Grande-Bretagne. Mais vous savez que le Gouvernement allemand se place au point de vue que la convention ne s'applique pas non plus à ces groupes d'employées, notamment à celles qui sont occupées dans les emplois commerciaux ou à des travaux de bureau. Le Gouvernement allemand a proposé au Conseil d'administration du Bureau international du Travail de *soumettre également cette* question à la Cour permanente de Justice internationale, et il aurait aimé que cette question d'interprétation fût rattachée à celle qui est traitée actuellement. Malheureusement, cela a été impossible. Mais, encore que la Cour permanente de Justice internationale n'ait à décider aujourd'hui que la seule question des préposées-chefs, j'ose cependant exprimer l'espoir *que les motifs de sa décision jetteront dès maintenant de la* lumière également sur la question des femmes occupées dans les emplois commerciaux et autres semblables, de façon qu'il soit superflu de saisir de nouveau la Cour permanente de Justice internationale d'une question tout à fait semblable à celle dont il s'agit ici.

Je ne propose donc pas d'ajourner la décision et de joindre *formellement les deux questions, mais je serais reconnaissant* si la Cour voulait non seulement décider que la Convention de Washington ne concerne pas les femmes occupant des postes de surveillance ou de direction, mais si elle exprimait de façon positive que la convention n'envisage que les ouvrières, c'est-à-dire les femmes qui effectuent un travail manuel.

4. — EXPOSÉ DE M. SERRARENS

(REPRÉSENTANT LA C. I. S. C.)

A LA SÉANCE PUBLIQUE DU 14 OCTOBRE 1932 (APRÈS-MIDI).

Monsieur le Président, Messieurs les Juges,

Les conventions internationales adoptées par les Conférences internationales du Travail ne sont pas toujours comprises dans le même sens.

Les rapports que les États, ayant ratifié ces conventions, présentent annuellement au Bureau international du Travail en vertu de l'article 408 du Traité de Versailles, et qui font l'objet d'un examen approfondi d'une commission d'experts et d'une commission de la Conférence, démontrent clairement qu'il y a entre les divers États divergence d'interprétation sur plusieurs points des conventions.

Quelquefois, il faut en attribuer la faute au texte, mais bien des fois des textes qui semblent clairs comme le jour sont interprétés par tel ou tel pays de telle façon que nos sentiments sont partagés entre le respect pour l'ingéniosité de certains juristes et l'émotion de constater que le but des conventions, qui est pourtant de rendre égales les conditions du travail dans les divers pays, est sérieusement menacé.

C'est pourquoi nous avons salué avec empressement la décision prise de saisir la Cour d'une question d'interprétation d'une des conventions internationales du travail, et nous tâcherons, dans la mesure de nos humbles forces, de donner à la Cour tous les renseignements qui pourraient l'aider à trouver ce qu'elle recherche, ce qu'elle nous donnera : la vérité juridique sur le texte en question, plus encore : la méthode d'interprétation des conventions qui sera le guide des États, de l'Organisation internationale du Travail et des organisations professionnelles dans tout le domaine des conventions.

Le double caractère que cette première consultation de la Cour sur l'interprétation d'une convention revêt par la nature des choses nous impose une certaine restriction.

Il nous paraît en tout cas qu'en recherchant le véritable sens des termes de la convention, il ne faut pas trop se laisser guider par le fait que certains États pourraient éprouver des inconvénients, ce que l'exposé du Gouvernement allemand croit devoir craindre, au cas où la Cour épouserait la thèse dite « littérale », ni encore par « l'impossibilité où se verraient de nombreux pays de ratifier » que le même exposé allègue, questions intéressantes sans doute, mais pas déterminantes au moment où l'on examine l'interprétation.

Si l'interprétation de la Cour menait à la constatation que la Convention de Washington sur le travail de nuit ne répond pas ou ne répond plus à son but, qu'elle ne prévoit pas telle

ou telle exception qui, ne rencontrant pas d'obstacle au point de vue social, pourrait même être souhaitable du point de vue économique, c'est à la Conférence qu'il incombe d'adopter les revisions nécessaires, et elle pourra le faire après l'avis de la Cour sur la base d'une interprétation définitive du texte en question, car, tout en reconnaissant la compétence complète de la Cour, il ne nous paraît pas approprié de lui demander de réparer les erreurs et omissions que la Conférence est censée avoir commises.

Le remarquable Mémoire que le Bureau international du Travail a soumis à la Cour fait une distinction entre la thèse historique et la thèse littérale.

La thèse historique a sans doute une valeur tout à fait spéciale mais restreinte.

Pour bien pénétrer dans l'essence d'un texte, il est toujours utile de se rendre compte de sa genèse, de se demander dans quelles circonstances il est né, quel esprit lui a servi de parrain.

Mais je ne pense pas que l'examen historique puisse faire plus que corroborer telle ou telle interprétation qui trouve sa base dans le texte même.

Car, en effet, lors de l'élaboration d'un texte dans le travail parlementaire, c'est du texte que l'on s'occupe, c'est le texte que l'on tâche d'amender.

Et cela est certainement plus vrai encore lorsqu'il s'agit de l'élaboration des conventions internationales, où les membres d'une commission, venus des pays les plus divers, avec des méthodes parlementaires, des conceptions juridiques bien différentes, ont déjà toute la peine du monde à se mettre d'accord sur un texte, et où — moins encore donc que dans les parlements nationaux — on ne peut supposer chez ceux qui rédigent le texte ou chez ceux qui l'adoptent la connaissance de sa genèse.

Du reste, ne susciterions-nous pas une source d'inquiétude, non seulement pour les délégués ouvriers, mais encore pour bien d'autres membres de la Conférence, si, après avoir rédigé un texte d'une clarté qui ne leur semblait laisser subsister aucun doute, ils devaient s'attendre à ce qu'on aille leur dire : Le texte ne vaut pas ce qu'il paraît, ce qu'il vous a semblé contenir, car, dans ce cas d'espèce, nous avons omis de vous dire que, treize ans avant que vous ayez accepté un texte interdisant le travail de nuit à toutes les femmes, le même terme a servi à ne désigner que les ouvrières ?

Car, si l'on peut alléguer, comme le Bureau international du Travail l'a fait en 1930 dans une note au Conseil d'administration (p. 39 des documents transmis par le Secrétaire général de la Société des Nations[1]), qu'« aucune remarque ne paraît

[1] P. 65 du présent volume.

avoir été faite à la Conférence de Washington pour signaler que le terme « femme » aurait, dans la nouvelle convention, un sens différent du sens qu'il avait dans l'ancienne », on est obligé de répondre qu'aucune remarque ne paraît avoir été faite à la Conférence de Washington pour signaler que le terme « femme » avait été employé à Berne pour ne désigner que les ouvrières et que, de ce chef, il devait être compris dans le même sens restrictif.

Ce serait donc, selon notre opinion, se servir d'une méthode présentant de sérieux inconvénients que d'alléguer des arguments historiques contre le texte d'une convention.

Mais, du fait qu'une méthode présente des inconvénients, il ne résulte pas encore nécessairement qu'elle doive être rejetée complètement. Suivons donc nos historiens dans leur voie et poussons l'examen historique un peu plus loin.

Nous devrons donc examiner, tout d'abord, la relation entre le texte de Washington et celui de Berne, entre la Conférence de Washington et celle de Berne.

Je n'abuserai pas du temps de la Cour en répétant, même brièvement, l'exposé historique que le Bureau international du Travail a donné dans son Mémoire. Après l'excellent exposé du représentant du Gouvernement anglais, je ne pense pas qu'il importe de m'étendre sur la question de savoir si, à Berne, on n'a envisagé que les ouvrières, bien que, pour des raisons mystérieuses, on ait choisi l'expression plus large de « femmes ». Il me paraît, en tout cas, qu'on n'a pensé qu'aux conditions de travail d'un certain nombre d'ouvrières obligées de travailler la nuit. Même parmi les ouvrières, le travail de nuit n'était pas encore bien développé. Dans les pays de l'Europe occidentale, auxquels allait s'appliquer l'interdiction projetée, lira-t-on dans une des études et documents du Bureau international du Travail (Série I, n° 1, p. 3, parue en 1921), « le nombre des femmes réellement employées au travail de nuit pouvait être considéré comme minime et ne se chiffrant pas à plus de quelques milliers ».

Il va sans dire que, dans ces circonstances, le nombre de femmes employées qui n'étaient pas ouvrières doit avoir été infime ou même nul.

Mais la Conférence de Berne ne fut qu'une première tentative faite par treize États européens d'abolir d'un commun accord certains abus dans les conditions ouvrières. Elle aboutit à deux conventions qui constituent un premier pas vers une collaboration internationale des États européens dans le domaine de la protection légale des ouvriers ; mais elle s'arrête là.

La conférence qui devait lui succéder en septembre 1914 n'a pas eu lieu.

Mais la Conférence internationale du Travail qui se réunit à Washington le lendemain de la guerre revêt un tout autre

caractère. Elle constitue l'organe principal de l'Organisation internationale du Travail, cette sœur jumelle de la Société des Nations, fondée par les traités, trouvant dans la Partie XIII du Traité de Versailles — comme la Cour l'a exprimé — « la source unique de l'existence et des attributions de cette organisation ».

Elle se réunit dans le but d'entamer une grande œuvre qui lui avait été assignée par cette même Partie XIII. Elle avait un ordre du jour auquel figuraient plusieurs questions importantes, au sujet desquelles elle allait adopter des conventions d'un type inconnu jusqu'en 1919.

Peut-être même allait-elle trop loin dans son estimation de la nouveauté de son œuvre, lorsque son président, l'honorable secrétaire du Travail M. Wilson, disait dans son discours d'ouverture que « cette institution constitue le premier effort concerté de la part des nations de la terre pour traiter d'une manière très complète les problèmes du travail ». Peut-être oubliait-elle même trop complètement l'œuvre accomplie avant la guerre, qui, du reste, n'aurait pas du tout été mentionnée à la Conférence si feu Mgr Nolens n'avait pas saisi la dernière occasion, celle des discours de remercîments, pour rappeler à la Conférence qu'un premier pas dans la même direction avait déjà été fait avant la guerre.

J'ai voulu faire ces remarques sur cette mentalité de la Conférence, dont je me souviens si bien, pour faire ressortir combien peu elle était consciente de continuer une œuvre entamée avant la guerre et comme elle avait plutôt l'impression d'inaugurer une nouvelle ère.

Quel a été dans ce cadre le sort qu'elle a réservé à la réglementation du travail de nuit ?

L'ordre du jour, annexé à la première section de la Partie XIII, mentionne sous le n° 3 : « Emploi des femmes .... *b*) pendant la nuit. » La cinquième question inscrite appelle : « Extension et application des conventions internationales adoptées à Berne en 1906 sur l'interdiction du travail de nuit des femmes employées dans l'industrie et l'interdiction de l'emploi du phosphore blanc (jaune) dans l'industrie des allumettes. »

La Conférence confia alors à une commission la tâche d'examiner les questions regardant l'emploi des femmes avant et après l'accouchement et celles concernant le travail de nuit. Cette commission avait reçu du Comité d'organisation la recommandation suivante : « Le Comité est d'avis que la Conférence devra recommander à tous les États Membres de la Société des Nations d'adhérer à la convention dont on trouvera le texte ci-après. » (Documents, p. 25 [1].)

[1] P. 41 du présent volume.

La Conférence a suivi cette méthode pour la Convention sur le phosphore blanc. La Commission du travail des femmes ne suivit pas cette recommandation ; elle ne revisa pas non plus la Convention de Berne. Il n'y avait pas de méthode prévue pour la revision.

Elle n'abolit pas non plus la Convention de Berne. Elle n'avait pas le pouvoir de le faire. Mais la Commission proposa à la Conférence de faire « une nouvelle convention comportant les modifications aux articles essentiels de la Convention de Berne », et elle proposa en outre « que, lorsque ces modifications auront été approuvées, l'ensemble soit soumis au comité de rédaction qui sera chargé de préparer un projet de convention complet à adopter par la Conférence du Travail » (Documents, p. 23 [1]).

La Convention de Berne restait en vie ; mais la Conférence de Washington a fait une nouvelle convention, ou plutôt elle a fait un projet de convention de l'Organisation internationale du Travail selon les règles de ses statuts, la Partie XIII du Traité de Versailles.

La Conférence l'adopta, sans faire allusion à la Convention de Berne. En effet, le préambule du projet de convention ne fait pas état de la cinquième question à l'ordre du jour, celle qui concernait l'extension et l'application de la Convention de Berne, mais seulement de la troisième. Il dit : « Après avoir décidé d'adopter diverses propositions relatives à l'emploi des femmes pendant la nuit », question comprise dans le troisième point de l'ordre du jour de la Conférence de Washington, « etc. .... ».

Il faut donc juger le texte tel que la Conférence de Washington l'a rédigé, et le texte, comme tel, ne permet pas plusieurs interprétations. Il ne parle pas d'ouvrières, il ne parle que de femmes. Il dit que les femmes ne pourront être employées pendant la nuit ; c'est ainsi que la Conférence l'a rédigé. Le texte n'est pas équivoque. Si certains délégués ont pu penser que le mot « femmes » signifiait ouvrières, il est bien certain que personne n'a averti la Conférence de ce que le mot « femmes » était grevé d'une hypothèque bernoise. Et un tel avertissement aurait bien été nécessaire parce que, à Berne, les divers pays étaient représentés par des diplomates, tandis qu'à Washington les délégués patronaux et ouvriers sont venus s'ajouter aux délégués gouvernementaux. C'eût bien été nécessaire, parce que, parmi les quarante États représentés à Washington, dix seulement avaient été représentés à la Conférence de Berne, vingt-trois étaient des États extra-européens. Je ne doute pas que l'honorable représentant de l'Allemagne aurait averti la Conférence de l'interprétation de

[1] P. 39 du présent volume.

Berne, s'il avait été présent ; mais malheureusement l'Allemagne n'était pas encore représentée.

On pourrait encore se prévaloir du principe que l'on doit, dans les conventions, rechercher la commune intention des Parties contractantes plutôt que de s'arrêter au sens littéral des termes. Mais, puisqu'il n'y a aucune indication que, dans la Conférence de Washington, les Membres de l'Organisation internationale du Travail aient eu une autre intention que celle qui ressort du texte, qui en lui-même est si clair et si net, il est bien difficile, voir impossible, d'appliquer cette méthode.

On pourrait demander, du reste, à ceux qui pensent que le mot « femmes » doit être compris dans un sens restrictif, dans quels termes, à leur avis, la Conférence aurait dû s'exprimer afin d'inclure réellement toutes les femmes dans l'interdiction.

On peut bien penser que la Conférence de Washington aurait fait œuvre utile si, après avoir compris toutes les femmes employées dans la formule de l'interdiction, elle avait inséré des dispositions analogues à celles prévues sous *a*) de l'article 2 de la Convention des heures. Mais cela n'a pas été le cas. Il me semble qu'il y aurait anomalie si, en comparant ces deux conventions votées toutes deux par la même conférence et dont une seulement contient cette exception, on venait prétendre que la convention qui ne contient pas l'exception devait être comprise comme la contenant.

Du reste, la thèse du Gouvernement allemand est autre. Le Gouvernement allemand, en se basant sur l'argument que la Convention de Berne n'aurait visé que les ouvrières, ne pense pas seulement exclure de l'application de la convention des femmes « qui occupent des postes de surveillance et de direction et n'effectuent pas normalement un travail manuel », mais est d'avis que toutes les employées devraient être exceptées de l'application de la convention ; et il voudrait voir « éclaircir la question de savoir si des personnes de sexe féminin qui ne sont pas dans des places de surveillance ou de *direction, mais sont occupées entièrement ou d'une manière* prépondérante dans les emplois commerciaux ou à des travaux de bureau, dans les entreprises industrielles », doivent tomber sous l'interdiction.

Pour les raisons invoquées ce matin par l'honorable représentant de l'Organisation internationale du Travail, je n'insiste pas sur ce dernier point, qui n'a pas été soumis à la Cour. Mais je veux simplement mentionner le point pour conclure que, dès que l'on s'écarte du texte, il y a confusion ; on ne sait plus où trouver le sens réel.

La seule solution, le seul salut, tant pour cette convention que pour les autres, est dans le respect scrupuleux des textes que les conférences internationales ont établis. Si ces textes

ne s'appliquent plus aux besoins actuels, amendons, revisons, mais respectons le devoir que les conventions telles qu'elles sont imposent aux États qui les ont ratifiées.

Tout en attendant respectueusement l'avis de la Cour, nous nous permettons d'exprimer notre opinion que la question soumise à la Cour devrait recevoir une réponse affirmative.

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5. — EXPOSÉ DE M. SCHEVENELS

(REPRÉSENTANT LA F. S. I.)

A LA SÉANCE PUBLIQUE DU 14 OCTOBRE 1932 (APRÈS-MIDI).

Monsieur le Président, Messieurs de la Cour,

J'avoue que je suis un peu mal à l'aise pour intervenir dans ce débat, qui a été essentiellement juridique. Je ne me sens pas du tout des compétences pour intervenir et discuter cet aspect juridique de la question.

Mais, du fait qu'on a surtout dans les conclusions essayé, en confrontant la thèse dite « littérale » et la thèse dite « historique », de tirer l'interprétation de la convention en question, j'ai osé intervenir dans le débat en y apportant quelques observations de la part de la Fédération syndicale internationale.

Pour interpréter certaines parties de cet article 3 incriminé, on a tenté de déterminer quelle avait été l'intention que les auteurs de la convention ont voulu mettre dans cet article. Afin de contribuer à la recherche de l'intention des auteurs de la convention, qu'il me soit permis d'apporter, sur ce point, le sentiment de l'immense majorité de la classe ouvrière. Ce sentiment de la classe ouvrière, je me permets de l'affirmer, était en 1919, comme il l'est encore maintenant en 1932, que l'intention de la représentation ouvrière, qui constituait à cette conférence internationale une partie importante, était de comprendre dans l'interdiction du travail de nuit des femmes dans l'industrie toutes les femmes : ouvrières, employées, sans aucune exception. Cette opinion se trouve d'ailleurs confirmée en tous points par la déclaration afférente faite par l'orateur précédent, M. Serrarens, qui a participé à la Conférence de Washington où fut adoptée cette convention.

La classe ouvrière a deux titres à faire valoir pour exprimer son opinion en la matière : le premier, c'est qu'à la Conférence internationale du Travail elle a été partie à l'élaboration et à l'adoption de cette convention ; en second lieu, c'est qu'elle est l'objet exclusif de la protection sociale visée par cette convention.

Je rencontre ici un argument qui a été invoqué par l'honorable représentant du Gouvernement allemand. Il voulait

démontrer *ab absurdo* que le terme « femmes » ne pouvait s'appliquer dans sa généralité absolue, vu que dans ce cas il devait s'appliquer également aux femmes-patrons. Il me suffit de produire ici l'argument qui a été invoqué ce matin par le représentant de l'Organisation internationale du Travail, c'est-à-dire que, pour interpréter les dispositions des conventions internationales du travail, deux sources sont à considérer, notamment la Partie XIII du traité de paix et le texte même des conventions. Dans la Partie XIII du traité de paix est visée la protection sociale de la classe ouvrière, en exclusion des patrons bien entendu.

Je me permettrai d'attirer également l'attention de la Cour permanente de Justice internationale sur le libellé de la question qui lui est soumise et qui, selon l'avis qu'il plaira à la Cour d'émettre, pourrait plus tard, loin d'écarter des doutes sur une interprétation donnée, prêter à de nouvelles confusions. Il y est dit : « .... aux femmes qui occupent des postes de surveillance ou de direction et n'effectuent pas normalement un travail manuel ». Entend-on, par cette question, lier les deux termes « postes de surveillance » et « n'effectuant pas normalement un travail manuel » afin de préciser la portée du *premier en y ajoutant le deuxième ? Ou bien désire-t-on con*sidérer les deux termes séparément, de sorte que chacun d'eux couvre une catégorie de femmes distincte ? J'ai l'impression que c'est la première hypothèse qu'il faut retenir, et qui, je crois, répond le mieux à l'intention des auteurs qui ont posé la question et à celle du Conseil d'administration du Bureau international du Travail, qui adopta la proposition relative à la consultation de la Cour permanente de Justice internationale.

Si l'on voulait étendre le sens de cette question, on pourrait arriver plus tard, si, bien entendu, on répondait par la négative, à comprendre non seulement les postes de surveillantes, mais également toutes les autres femmes qui normalement n'effectuent pas un travail manuel. Je me permets d'attirer l'attention de Monsieur le Président et de Messieurs les membres de la Cour sur les énormes difficultés qui surgiront après, quand il s'agira de mettre cette définition en pratique. On a rappelé ce matin les interprétations divergentes de la présente convention sur le travail de nuit des femmes. Tel pays estimait qu'il allait de soi que les postes de direction et les postes de surveillance étaient exclus même par ce terme général de « femmes ». Tel autre considérait que le terme ne permet aucune exception. Cette catégorie de femmes au sujet de laquelle il existe, à l'heure actuelle, ces divergences de vues ne comprend, tout le monde le sait, que quelques centaines de femmes ; il s'agissait notamment de femmes ingénieurs, de femmes qui, à la suite du développement technique de l'industrie, arrivent à certains postes supérieurs dans

l'économie industrielle. La matière du litige qu'on va créer en prenant dans l'interprétation de l'article 3 les postes de surveillance et en visant les femmes n'effectuant pas un travail manuel s'élargira considérablement et portera sur des milliers de cas, surtout au début, lorsque sera débattue la question des postes de surveillance et des postes de direction ; en outre, le Gouvernement allemand soulèvera peut-être plus tard, séparément, la question nouvelle du travail manuel des ouvrières, employées.

Je voudrais rappeler que jusqu'à présent aucune autorité, aucune instance n'a réussi à donner d'une façon raisonnablement satisfaisante une définition claire et précise des termes : ouvrier, employé, ouvrière, employée. Les difficultés ne seraient pas moindres si on essayait de préciser les termes : femme salariée, femme employée dans les entreprises industrielles, que contient la Convention de 1919 sur le travail de nuit des femmes dans l'industrie, et cette même observation vaudra quand il s'agira de définir le terme « poste de surveillance ». S'agira-t-il de la femme qui surveille le rendement des travailleuses qui sont placées sous ses ordres et avec lesquelles elle travaille elle-même, comme c'est le cas dans la plupart des usines du textile, des usines de mécanique et nombre d'autres entreprises industrielles ? Vous aboutiriez à une situation extrêmement compliquée, sinon contradictoire, si, en voulant faire une distinction entre les femmes d'une même équipe effectuant ensemble le même travail pendant les mêmes heures, vous alliez interdire aux unes strictement et formellement le travail de nuit et permettre à une seule d'entre elles d'échapper au champ d'application de la loi pour la seule raison qu'elle surveille et qu'elle organise le travail de ses compagnes. Je ne peux pas croire que telle pourrait être l'intention de la Cour.

Je me permets, pour terminer, de dire un mot en réponse à l'honorable représentant du Gouvernement britannique, qui, dans son intervention de ce matin, s'est élevé contre les conclusions écrites de la Fédération syndicale internationale. Dans les conclusions que nous nous sommes permis de soumettre à la Cour, nous exprimions l'opinion que toutes les femmes ouvrières et employées occupées dans des établissements industriels, à la seule exception des femmes assumant un poste de direction, doivent tomber sous l'application de l'article 3 de la Convention sur le travail de nuit des femmes dans l'industrie. Je comprends l'appréhension du représentant du Gouvernement britannique, mais je m'empresse de me rallier à sa thèse et de dire que la seule signification de ces conclusions que nous nous sommes permis de présenter est celle-ci. Nous sommes par avance d'accord avec l'interprétation stricte que désire voir donner à la convention le Gouvernement de la Grande-Bretagne, et s'il plaît à la Cour d'émettre un avis conforme à ce

vœu, nous nous déclarons pleinement satisfaits. Mais si cependant la Cour, tenant compte de certaines considérations tirées de la confrontation des deux thèses littérale et historique, et estimant qu'indubitablement les auteurs de la convention n'ont pas eu l'intention de comprendre certaines catégories de femmes dans le champ d'application de la convention, se croyait juridiquement à même de donner une interprétation plus large du terme général « femmes », nous sommes d'avis que cela ne pourrait aller au delà de la catégorie de femmes assumant un poste de direction.

C'est donc seulement à titre subsidiaire que nous avons voulu indiquer dans nos conclusions que cette dernière interprétation ne trouverait, dans les milieux ouvriers, aucune opposition et ne serait pas considérée comme une infraction aux principes de la protection sociale qui sont à la base de la Partie XIII du traité de paix.

J'ai terminé. Je remercie Monsieur le Président et Messieurs les membres de la Cour d'avoir bien voulu entendre le représentant de la Fédération syndicale internationale.