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OFFICIAL DOCUMENTS.

Permanent Court of International Justice.

Decision of the Court concerning the Interpretation of Article 389 of the Treaty of Versailles.

A report of the proceedings before the Permanent Court of International Justice concerning the question of the nomination of the Netherlands Workers' Delegate to the Third Session of the International Labour Conference has already been published in the *Official Bulletin*¹. On 31 July 1922, the Court delivered its advisory opinion, which is as follows:—

ADVISORY OPINION No. 1

By a Resolution dated 12 May 1922, the Council of the League of Nations requested the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion on the following question:—

“Was the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty of Versailles?”

The request for an advisory opinion on this question was transmitted to the Court by a letter from the Secretary-General of the League of Nations, by virtue of authority received from the Council.

In conformity with Article 73 of the Rules of Court, notice of the request was given to the Members of the League of Nations through the Secretary-General of the League, to the States mentioned in the Annex to the Covenant and to the following organisations :—

The International Association for the Legal Protection of Workers¹;

The International Federation of Christian Trade Unions, and

The International Federation of Trade Unions.

The request was also communicated to Germany and Hungary. Finally, the Court decided to hear, at a public sitting, the representatives of any Government and international organisation which, within a fixed period of time, expressed a desire to be so heard. This decision was brought to the knowledge of all the Members, States and organisations mentioned above and to the International Labour Office at Geneva.

The Court thus had at its disposal, when pronouncing its opinion, the following documents :—

- (1) A letter from the Director of the International Labour Office to the Secretary-General, dated 17 March 1922, together with the Annexes accompanying this letter².
- (2) A memorandum from the Netherlands Government, dated 14 June 1922.
- (3) A memorandum from the Netherlands General Confederation of Trade Unions (*Algemeen Nederlandsch Vakverbond*).
- (4) A telegram from the Swedish Government.

The Court also heard oral statements :

- (1) on behalf of the British Government,
- (2) on behalf of the Netherlands Government,
- (3) on behalf of the International Federation of Trade Unions,
- (4) on behalf of the International Federation of Christian Trade Unions,
- (5) on behalf of the International Labour Office.

As a result of this information, the following facts are established :—

The Minister of Labour of the Netherlands, with the object of bringing about the agreement prescribed in Article 389, paragraph 3 of the Treaty of Versailles, invited the five following Netherlands labour organisations, which he regarded as the most important, to take part in a consultation with regard to the nomination of the Workers' Delegate for the Third Session of the International Labour Conference :—

- (1) The Netherlands Confederation of Trade Unions, numbering, in April 1921, 218,596 members ;
- (2) The Confederation of Catholic Trade Unions, numbering, in April 1921, 155,642 members ;
- (3) The Confederation of Christian Trade Unions, numbering, in April 1921, 75,618 members ;
- (4) The Netherlands General Confederation of Trade Unions, numbering, in April 1921, 51,195 members ;
- (5) The National Labour Secretariat, numbering, in 1 January 1921, 36,038 members.

The last of the five organisations mentioned above refused to take part in the consultation. The consultation did not lead to general agreement. The second, third and fourth organisations mentioned agreed among themselves to propose a candidate for nomination, while the Netherlands Confederation of Trade Unions, on the other hand, considered itself entitled to propose the Workers' Delegate.

The Netherlands Workers' Delegate to the First and Second Sessions of the Labour Conference had been nominated from the Netherlands Confederation of Trade Unions, either without opposition on the part of the other organisations or with their express consent. The latter organisations were on those occasions represented by technical advisers. The Minister, however, when nominating the Delegate for the Second Session of the Conference, expressed the intention of selecting a member of one of the other organisations as Delegate on the next occasion, whilst at the same time assuring the Netherlands Confederation that it would be represented by an adviser.

The Minister accordingly proposed, in 1921, to choose one of the technical advisers to the Third Session of the Conference from amongst the members of the Netherlands Confederation of Trade Unions, whilst appointing a candidate proposed by the other organisations as Workers' Delegate. The Netherlands Confederation, however, would not fall in with this arrangement.

Thereupon, the Queen of the Netherlands, by a Royal Decree, dated 4 October 1921, appointed as Workers' Delegate the common nominee of the three organisations.

On 22 October 1921, the Netherlands Confederation of Trade Unions sent a letter to the International Labour Office protesting against this nomination. The Confederation maintained that the nomination constituted a violation of the provisions of Article 389 of the Treaty of Versailles because the selected candidate was not

selected in agreement with the Netherlands Confederation, which taken singly had the largest number of members, and was, on this account, the most representative organisation within the meaning of the above-mentioned Article.

The Conference, however, admitted the Workers' Delegate appointed by the Netherlands Government on the understanding that his admission should not be treated as a precedent. At the same time it adopted the following resolution :

" The General Conference of the International Labour Organisation invites the Governing Body of the International Labour Office to request the Council of the League of Nations to obtain, in accordance with Article 14 of the Covenant of the League of Nations, from the Permanent Court of International Justice an opinion as to the interpretation of Article 389 of the Treaty of Versailles and as to the rules which should be observed by the Members of the International Labour Organisation in order to comply with the terms of this Article in appointing non-Government Delegates and Advisers to the Sessions of the General Conference. "

In pursuance of this resolution, and under instructions from the Governing Body of the International Labour Office, the Director of the Office requested the Council of the League of Nations to obtain from the Court an opinion upon the question whether the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference was nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty of Versailles.

This request was favourably received by the Council, who decided to ask the Court for an advisory opinion upon the above-mentioned question.

The Court gives its opinion as follows :

Since the Netherlands Workers' Delegate to the Third Session of the International Labour Conference was admitted by the Conference, the Court is of opinion that the sole object of the question submitted to it is to obtain an interpretation of the provisions of paragraph 3 of Article 389. Though, according to the form given to the question by the Council of the League of Nations, the method of procedure adopted by the Government of the Netherlands for the nomination of the Workers' Delegate forms the subject of the question, this is solely in order to fix clearly the state of facts to which the interpretation has application.

The passages material to be considered are the third and seventh paragraphs of Article 389 :

Paragraph 3. — " The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries. "

Paragraph 7. — " The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article. "

The Netherlands Confederation of Trade Unions is, on the statements before the Court, the most numerous organisation of the kind in Holland. It would not necessarily follow that it is the most representative, but for the purposes of this opinion it may be assumed to be so.

The General Conference of Representatives of the Members of the International Labour Organisation is composed of four representatives of each of the Members, of whom two are to be Government Delegates and the two others are to be Delegates representing respectively the employers and the workpeople of each of the Members. (See the first paragraph of Article 389).

There is no limitation upon the freedom of choice by the Government in appointing the two Government Delegates, but with regard to the choice of the non-Government Delegates a limitation is imposed. By the third paragraph of Article 389 of the Treaty, the Members undertake that, if industrial organisations exist in the country, the Member shall nominate non-Government Delegates chosen in agreement with the industrial organisations which are most representative of employers or workpeople, as the case may be, in their respective countries.

The engagement contained in the third paragraph is not a mere moral obligation. It is a part of the Treaty and constitutes an obligation by which the Parties to the Treaty are bound to one another.

The obligation is that the persons nominated should have been chosen in agreement with the organisations most representative of employers or workpeople, as the case may be. There is no definition of the word "representative" in the Treaty. The most representative organisations for this purpose are, of course, those organisations which best represent the employers and the workers respectively. What these organisations are, is a question to be decided in the particular case, having regard to the circumstances in each particular country at the time when the choice falls to be made. Numbers are not the only test of the representative character of the organisations, but they are an important factor ; other things being equal, the most numerous will be the most representative. The Article throws upon the Government of the State the duty of deciding, on the data at its disposal, what organisations are, in point of fact, the most representative. Its decision on this question may, however, be reviewed under the seventh paragraph of this Article, and the Conference has the power, by a two-thirds majority, to refuse to admit any Delegate whom it deems not to have been nominated in accordance with the Article. Such a refusal to admit may be based on any grounds, either of fact or law, which satisfy the Conference that the Delegates have not been so nominated.

The Netherlands Government, whose good faith in this matter has not been contested, came to the conclusion that three organisations, the Catholic Confederation, the Christian Confederation and the General Confederation were collectively more representative of the workpeople of the Netherlands than the Netherlands

Confederation. The Government accordingly nominated the Delegate in agreement with those three organisations.

Could the Netherlands Government dispense with an agreement with the Netherlands Confederation of Trade Unions, and content itself with an agreement with the three other organisations? In order to reply to this question, it must first of all be decided whether the agreement must be with only one organisation.

It was suggested that the third paragraph of Article 389 spoke of organisations in the plural, only because it was dealing with the case of the employers as well as with the case of the workers, and that what was meant was that the Government, in nominating the Employers' Delegate, should proceed in agreement with the views of the one organisation most important amongst those representative of the employers, and in choosing the Workers' Delegate, in accordance with the views of the one organisation most important amongst those representative of the workers.

The Court cannot accept this interpretation.

The view maintained by the Netherlands Confederation is not sufficiently supported by the text of the Article, and it is at all events obvious that the ideas inspiring the provisions of paragraph 3 clearly demonstrate that the only possible construction that can be given to the word "organisations" is that the plural refers as well to employers' as to workers' organisations.

In accordance with the terms of the first paragraph of Article 389, the Workers' Delegate represents all workers belonging to a particular Member. The only object of the intervention of industrial organisations, in connection with the selection of Delegates and technical advisers, is to ensure, as far as possible, that the Governments should nominate persons whose opinions are in harmony with the opinions of employers and workers respectively. If, therefore, in a particular country there exist several industrial organisations representing the working classes, the Government must take all of them into consideration, when it is proceeding to the nomination of the Workers' Delegate and his technical advisers. Only by acting in this way can the Government succeed in choosing persons who, having regard to the particular circumstances, will be able to represent at the Conference the views of the working classes concerned.

The following example will show how widely the view maintained by the Netherlands Confederation of Trade Unions differs from the spirit of Article 389 of the Treaty of Versailles. In a given country, there are six organisations of workers, one with 110,000 members, and five others each with a membership of 100,000. According to the view of the objectors to the nomination made in the present case, the candidate proposed by the five last organisations jointly would have to be discarded in favour of the candidate of the first. One hundred and ten thousand workers would dictate to five hundred thousand. Such a result is enough to condemn the interpretation which would make it possible, and unequivocal terms would be required to compel its adop-

tion. Now the wording of the Article lends no support to such an interpretation.

It has been contended that it would be advantageous if the Delegate were to represent a single organisation and not a group of organisations, whose policies may differ. The Court confines itself to observing that no suggestion to the effect that only one organisation should be represented is anywhere to be found in the Treaty, which, on the contrary, expressly refers, in the first paragraph of Article 389, to the representation of the workers of each particular country.

The Netherlands Confederation of Trade Unions has also contended that, even admitting that the text of paragraph 3 of Article 389 purports to include several workers' and employers' organisations, the Delegate was not nominated in accordance with the provisions of the paragraph in question, because an agreement with three organisations, which do not include the most numerous organisation, is not an agreement with the most representative organisations. The meaning of this appears to be that if the plural construction of the text is adopted, the agreement should be made with all the most representative organisations. Even admitting that such an interpretation is reconcilable with the letter of paragraph 3 of Article 389, it is clearly inadmissible. In order to realise this, it will suffice to point out that the construction in question would make it possible, in opposition to the wishes of the great majority of workers, for one single organisation to prevent the reaching of an agreement. A construction which would have this result must be rejected.

The aim of each Government must, of course, be an agreement with all the most representative organisations of employers and workers as the case may be; that, however, is only an ideal which it is extremely difficult to attain, and which cannot, therefore, be considered as the normal case and that contemplated in paragraph 3 of Article 389.

What is required of the Governments is that they should do their best to effect an agreement, which, in the circumstances, may be regarded as the best for the purpose of ensuring the representation of the workers of the country.

This is precisely what the Netherlands Government did, when, after failing to reach an agreement with all the industrial organisations which it regarded as the most representative, it nominated the Workers' Delegate in agreement with the organisations, which, taken together, included a majority of the organised workers of the country. This does not mean that the fortuitous and temporary combination of three different organisations was treated by the Netherlands Government as a single organisation which, *ipso facto*, had become the most representative in place of the Netherlands Confederation of Trade Unions. Such a fiction is in no way necessary in order to explain and justify the action taken by the Government.

For these reasons :

The Court is of opinion that the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference was nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty of Versailles, and therefore answers in the affirmative the question referred to it.

DONE in French and English, the French text being authoritative,

at the Peace Palace, the Hague, this thirty-first day of July, one thousand nine hundred and twenty-two, in two copies, one of which is to be placed in the archives of the Court and the other to be forwarded to the Council of the League of Nations.

(Signed) LODER,

President.

(Signed) Å. HAMMARSKJÖLD,

Registrar.

GENERAL NOTES.

Thirteenth Session of the Governing Body of the International Labour Office.

The Thirteenth Session of the Governing Body of the International Labour Office was held at Interlaken on the invitation of the Swiss Government. The Session opened on Tuesday, 25 July 1922, with Mr. Arthur Fontaine, French Government Representative, in the chair.

The following members took part in the work of the session :

Government Representatives :

Mr. Arthur Fontaine (France), Chairman.

Mr. Kuttig, substitute for Dr. Leymann (Germany).

Mr. Mahaim (Belgium).

Mr. Carnegie, substitute for Mr. Murdock (Canada).

Mr. Vedel (Denmark).

Count de Altea, substitute for Viscount de Eza (Spain).

Sir Montague Barlow (Great Britain).

Mr. de Michelis (Italy).

Mr. Adatci, substitute for Mr. Inuzuka (Japan).

Mr. Sokal (Poland).

Mr. Rüfenacht (Switzerland), replaced after the first sitting by Mr. Pfister.

Employers' Representatives :

Mr. Carlier (Belgium).

Mr. Pinot (France).

General Baylay, substitute for Sir Allan Smith (Great Britain).

Mr. Olivetti (Italy).

Mr. Colomb (Switzerland).

Mr. Hodacz (Czechoslovakia).

Workers' Representatives :

Mr. Leipart (Germany).

Mr. Schürch (Switzerland), substitute for Mr. Draper (Canada).

Mr. Jouhaux (France).

Mr. J. B. Williams, substitute for Mr. Stuart Bunning (Great Britain).

Mr. Oudegeest (Netherlands).

Mr. Thorberg, substitute for Mr. Lindquist (Sweden).

FIRST SITTING.

Afternoon of Tuesday, 25 July.

At the opening of the sitting, Mr. Rüfenacht welcomed the members of the Governing Body to Interlaken. He also expressed his profound regret at having to relinquish his mandate as Representative of the Swiss Government on the Governing Body, on account of his nomination as Swiss Minister at Berlin.

He added that the Federal Council had nominated as his successor Mr. Pfister, Director of the Federal Labour Office.

The Chairman, in the name of the Governing Body, thanked the Federal Council for its cordial invitation ; he congratulated Mr. Rüfenacht on the distinction which he had received, and expressed the unanimous regret caused by his departure. At the same time, the Chairman welcomed Mr. Pfister, the new Representative of the Swiss Government, to the Governing Body.

Report of the Director.

After having approved, with some modifications, the minutes of the Twelfth Session, the Governing Body considered the report of the Director on the activities of the Office since the last Session.

Native Labour.

On account of the numerous requests for information addressed to the International Labour Office on the subject of native labour, and of the necessity of studying questions of this kind, particularly in countries subject to mandate, the Governing Body considered whether it was desirable to entrust the study of these questions to a special service. The Governing Body adopted the following resolution :