

COUR PERMANENTE DE JUSTICE INTERNATIONALE

SÉRIE A/B

ARRÊTS, ORDONNANCES ET AVIS CONSULTATIFS

FASCICULE N° 50

INTERPRÉTATION DE LA CONVENTION
DE 1919 CONCERNANT LE TRAVAIL
DE NUIT DES FEMMES

AVIS CONSULTATIF DU 15 NOVEMBRE 1932

XXVI^{me} SESSION

1932

XXVIth SESSION

ADVISORY OPINION OF NOVEMBER 15th, 1932

PERMANENT COURT OF INTERNATIONAL JUSTICE

SERIES A./B.

JUDGMENTS, ORDERS AND ADVISORY OPINIONS

FASCICULE No. 50

INTERPRETATION OF THE CONVENTION
OF 1919 CONCERNING EMPLOYMENT
OF WOMEN DURING THE NIGHT

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SOCIÉTÉ D'ÉDITIONS
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"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."

The doubt which has arisen in connection with the interpretation of the Article is whether or not it was meant to apply to certain categories of women other than manual workers.

The wording of Article 3, considered by itself, gives rise to no difficulty; it is general in its terms and free from ambiguity or obscurity. It prohibits the employment during the night in industrial establishments of women without distinction of age. Taken by itself, it necessarily applies to the categories of women contemplated by the question submitted to the Court. If, therefore, Article 3 of the Washington Convention is to be interpreted in such a way as not to apply to women holding posts of supervision and management and not ordinarily engaged in manual work, it is necessary to find some valid ground for interpreting the provision otherwise than in accordance with the natural sense of the words.

The terms of Article 3 of the Washington Convention, which are in themselves clear and free from ambiguity, are in no respect inconsistent either with the title, or with the Preamble, or with any other provisions of the Convention. The title refers to "employment of women during the night". The Preamble speaks of "women's employment during the night". Article 1 gives a definition of an "industrial undertaking". Article 2 states what is meant by the term "night". These provisions, therefore, do not affect the scope of Article 3, which provides that "women shall not be employed during the night either in any public or private industrial undertaking, or in any branch thereof".

The question which the Court is now called upon to answer amounts therefore to deciding whether there exist, in respect of this Convention concerning the employment of women during the night, good grounds for restricting the operation of Article 3 to women engaged in manual work.

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The grounds considered above upon which it has been suggested that the natural meaning of the text of the Convention can be displaced, do not appear to the Court to be well founded.

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The Court has been so struck with the confident opinions expressed by several delegates with expert knowledge of the subject at Geneva during the discussions in 1930 and 1931 on the proposal to revise the Washington Convention on Night Work of Women to the effect that the Convention applied only to working women—*ouvrières*—, that the Court has been led to examine the preparatory work of the Convention in order to see whether or not it confirmed the opinions expressed at Geneva.

In doing so, the Court does not intend to derogate in any way from the rule which it has laid down on previous occasions that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself.

The history of this Convention as shown by the preparatory work is as follows:

The task of organizing the First Labour Conference was entrusted to an international Committee, the membership of which, like the agenda of the Conference, was fixed by Part XIII of the Treaty of Versailles. The recommendation of this Organizing Committee was that the Conference should urge all States, Members of the League of Nations, to accede to the Convention of Berne.

A Committee was appointed by the Conference to deal with the subject of the employment of women. As regards the employment of women by night, this Committee went beyond the proposals of the Organizing Committee and recommended a new convention which was to supersede that of Berne, but was to follow it in outline, while effecting a series of changes

which are indicated in the Committee's report. Whether it was the intention of the members of the Committee that the new convention which they recommended for adoption should follow so closely the Convention it was to supersede as to carry into the new convention any agreed interpretation of phrases and words in the old Convention, is a matter which the Committee's report is insufficient to determine. As many phrases can be found which tell one way as the other. On the other hand, the wording of the report does not seem sufficient to show that the word "women" is used in the sense of "*ouvrières*". To be exact, in the French text only, six times words are used which are consistent with the view that "*femmes*" means "*femmes*" and not "*ouvrières*", and once only the word used is "*ouvrières*", and that only in the general statement at the end of the report that an effective prohibition of night work for women will constitute a marked progress in the "*protection de la santé des ouvrières*". As to this last sentence, it is well to note that the French and English texts do not correspond, that the English word is the phrase "women workers", and that Miss Smith, who submitted the report, was English and used her own language.

The report of the Committee was adopted unanimously and was referred to the Drafting Committee of the Conference with instructions to prepare a new convention on the lines of the Convention of Berne, embodying the amendments adopted, and to add new formal paragraphs.

The Drafting Committee submitted to the Conference at one and at the same time the text of the proposed convention on night work, together with that of four others. The speech made on behalf of the Drafting Committee in submitting these draft texts to the Conference shows that the members of that Committee attached importance to the various conventions being uniform. The Rapporteur said: "In so far as possible, these conventions have been drafted along uniform lines.... In drafting the substantive parts of

the various draft conventions, the Drafting Committee has employed standard expressions whenever the use of these expressions has not interfered with the meaning of the report or the draft referred to this Committee by the Conference. The Drafting Committee wishes to suggest to the Conference that it is of the highest importance that such uniformity should be observed as far as possible, in order that there may be no confusion in the future concerning the legal results which flow from these draft conventions."

The text submitted by the Drafting Committee was unanimously adopted by the Conference.

The fact that the Preamble of the Convention as prepared by the Drafting Committee attached this Convention to item 3 in the agenda (Women's employment.... during the night) and not to item 5 (Extension and application of the Convention of Berne) has been noted above, page 377.

The impression derived from a study of the preparatory work is that, though at first the intention was that the Conference should not deviate from the stipulations of the Berne Convention, this intention had receded into the background by the time that the Draft Convention was adopted on November 28th, 1919. The uniformity of the terms of this Draft Convention with those of the other draft conventions which were being adopted, and which had their origin in the programme set forth in Part XIII of the Versailles Treaty, had become the important element.

The preparatory work thus confirms the conclusion reached on a study of the text of the Convention that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words.

At this point the Court would refer to what it has already said, viz. that it has no intention of expressing any opinion whatever as to the correct interpretation of the Convention of Berne.

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The similarity both in structure and in expression between the various draft conventions adopted by the Labour Confer-