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¹ date when the request for an advisory opinion or application was filed with the court Registry

[6] Permanent Court of International Justice.

<i>Present:</i>	MM.	Huber,		<i>President,</i>
		Loder,		<i>Former President,</i>
		Weiss,		<i>Vice-President,</i>
Lord	MM.	Finlay, Nyholm, Moore, de Bustamante, Altamira, Oda, Anzilotti, Pessoa.		<i>Judges</i>

On March 17th, 1926, the Council of the League of Nations adopted the following Resolution:

"The Council of the League,

"Having considered a letter of February 3rd, 1926, from the Director of the International Labour Office to the Secretary-General of the League of Nations by which the Council is informed of the adoption by the Governing Body of the International Labour Office of a Resolution in the following terms:

"The Governing Body of the International Labour Office, having before it a request of the Employers' Group [7] for the submission to the Permanent Court of International Justice of the question of the jurisdiction of the International Labour Organization in regard to the personal work of the employer, decides, although the majority considers that the International Labour Organization is competent in the matter to which the request refers, and declaring that the present decision shall not constitute a precedent, to transmit the request to the Council of the League of Nations in application of Article 14 of the Treaty of Peace, and to

state the question to be referred to the Court as follows:

"Is it within the competence of the International Labour Organization to draw up and to propose labour legislation which, in order to protect certain classes of workers, also regulates incidentally the same work when performed by the employer himself?"

"Has the honour to request the Permanent Court of International Justice to give an advisory opinion on the question formulated in the above-quoted Resolution.

"The International Labour Office is requested to afford the Court all the assistance which it may require in the consideration of the question hereby submitted.

"The Council authorizes the Secretary-General to submit the present Request to the Court, together with the letter of the Director of the International Labour Office of February 3rd, 1926, and all other relevant documents, to give all assistance necessary in the examination of the question and, if necessary, to take steps to be represented before the Court."

In pursuance of this Resolution, the Secretary-General of the League of Nations submitted to the Court, on March 20th, 1926, a Request for an advisory opinion in the following terms:

"The Secretary-General of the League of Nations,

"In pursuance of the Council Resolution of March 17th, 1926, and in virtue of the authorization given by the Council,

"Has the honour to submit to the Permanent Court of International Justice an Application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion to the Council on the questions which are referred to the Court by the Resolution of March 17th, 1926. [8]

"The Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of this matter, and will, if necessary, arrange to be represented before the Court."

In conformity with Article 73 of the Rules of Court, notice of the Request was given to

the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Under the same article, notice of the Request was also given to the International Labour Organization and to the following further international organizations considered as likely to be able to furnish information on the question submitted to the Court:

International Organization of Industrial Employers;

International Federation of Trades Unions;

International Confederation of Christian Trades Unions.

It was further brought to the knowledge of the four Organizations notified that, should they desire to furnish information on the question at issue, they would have to file applications in this respect; at the same time, a delay for the presentation of written memoranda was fixed. Such memoranda were received from all the organizations concerned, except the International Confederation of Christian Trades Unions.

At the request of the Organizations, their representatives furnished information at the hearings held on June 28th and 29th, 1926. These representatives were:

- (1) For the International Labour Organization, *M. Albert Thomas*, Director of the International Labour Office.
- (2) For the International Organization of Industrial Employers, *Me. Borel*, of Geneva, and *Me. Lecocq*, of Brussels, the Secretary-General of the Organization.
- (3) For the International Federation of Trades Unions, *Me. Mendels*, of Amsterdam.
- (4) For the International Confederation of Christian Trades Unions, *M. Serrarens*, of Utrecht, the Secretary-General of the Confederation.

The International Labour Office finally submitted to the Court, in conformity with the Resolution of the Council of the League of Nations, a set of documents concerning the treatment by the [9] International Labour Organization of the question of nightwork in bakeries and concerning the origin of the question submitted to the Court. The Director of the Office, in connection with the hearings, filed a certain number of additional documents¹.

I.

The Court considers it expedient, in the first place, to indicate the circumstances which led the Council of the League of Nations to ask for an advisory opinion on the question set out in the Request.

On the Agenda for the Sixth Session of the International Labour Conference, held in 1924, there appeared the following item:

"IV. Nightwork in Bakeries."

The inclusion of this item in the agenda was not objected to by any of the Governments of the Members of the International Labour Organization.

Accordingly, and in conformity with the usual procedure, the International Labour Office prepared, after consulting the Governments, a "proposed Draft Convention" concerning nightwork in bakeries, to be used as a basis for the discussions of the Conference; this draft provided, *inter alia*, that subject to certain exceptions no work should be carried on in bakeries during the night. For the purpose of the draft, the term "bakery" included all undertakings where bread, pastry or confectionery is made, but did not include domestic bakery.

The discussion by the Conference of the subject-matter of nightwork in bakeries resulted in the preliminary adoption, on July 5th, 1924, by 73 votes to 15, of a proposed Draft Convention, referred for final vote to the Seventh Session of the Conference; the first Article of this Draft Convention runs as follows:

"Subject to the exceptions hereinafter provided, the making of bread, pastry or other flour confectionery during the night is forbidden.

"This prohibition applies to the work of all persons, including proprietors as well as workers, engaged in the making [10] of such products; but it does not apply to work which is done by members of the same family for their own consumption.

"This Convention has no application to the wholesale manufacture of biscuits."

The adoption of this proposed draft was the outcome of an important discussion. The

¹ All the documents referred to above are listed in the Annex.

report of that Commission of the Conference, to which the matter had been referred, was accompanied by a minority report in which strong exception was taken to the application made in the Draft Convention of the principle of prohibition of nightwork to the employer himself. The minority was composed of members belonging to the employers' group of the Conference. Its objections were again expressed with much force also in the debates of the full Conference.

In the Agenda for the Seventh Session of the Conference was included, again without objection from the Members of the International Labour Organization, the following item:

"IV. *Nightwork in Bakeries* (final vote on the Draft Convention adopted by a preliminary vote of the Conference at its Sixth Session)."

The Commission to which this item was referred had to deal, amongst others, with the following two amendments to Article 1 of the Draft Convention:

(1) "This prohibition applies to the work of all persons employed in the making of such products, but it does not apply to work done by the employer himself or by any person working on his own account, or to work which is done by members of the same family for their own consumption, or to work done in a bakery belonging to an hotel or restaurant or any public or private institution for consumption in the hotel, restaurant or institution."

(Great Britain.)

(2) "This prohibition applies to the work of all persons engaged in the making of such products; but it does not apply [11] to such work done by the head of the undertaking himself or by any other person working on his own account, nor to work which is done by members of the same family for their own consumption.

"Those Members the national legislation of which has already extended the prohibition of nightwork to the heads of undertakings agree to maintain this system of general prohibition."

(Belgium, subsidiary amendment in case the British amendment is not adopted.)

When the Draft Convention was reported back to the Conference, the first Article was worded as follows:

"Subject to the exceptions hereinafter provided, the making of bread, pastry or other flour confectionery during the night is forbidden.

"This prohibition applies to the work of all persons, including proprietors as well as workers, engaged in the making of such products; but it does not apply to the making of such products by members of the same household for their own consumption.

"This Convention has no application to the wholesale manufacture of biscuits. Each Member may, after consultation with the employers' and workers' organizations concerned, determine what products are to be included in the term 'biscuits' for the purpose of this Convention."

After discussion, in the course of which the objections raised by the employers' group to the application to employers of the prohibition of nightwork were again stated, the Conference, on June 5th, 1925, formally rejected the British amendment to Article 1 by 73 votes to 36; the Belgian amendment was withdrawn. On June 8th, 1925, the Draft Convention, including the Article 1 (set out above), was finally adopted by 81 votes to 26.

The employers' group, however, maintained their doubts as to the legality of the extension, in the said article, of the prohibition against nightwork to the personal work of the employer. They accordingly proposed, at the Thirtieth Session of the Governing [12/2] Body of the International Labour Office, that this Body should take the necessary steps in order to obtain the Court's¹ opinion as to whether the International Labour Organization was competent to draw up and propose regulations applying to the work of the employer himself. In the course of the discussion which ensued, it was, *inter alia*, observed that the question on which the Court's opinion was required had, in fact, a less general scope and contemplated only whether the Labour Organization was competent to draw up and propose regulations which, primarily and essentially intended to deal with the work of employed persons, incidentally affected the work of an employer considered as himself a worker. This view prevailed, and, eventually, the Governing Body adopted, by 17 votes, there being no contrary vote, a Resolution the terms of which are reproduced in the Resolution of the Council of the League of Nations set out above.

The latter Resolution shows that it was in compliance with the request of the Governing Body that the Council of the League decided to ask the Court to give an advisory opinion on the question stated at the outset of the present opinion.

II.

The question submitted to the Court is whether it is within the competence (*compétence*) of the International Labour Organization "to draw up and propose labour legislation which, in order to protect certain classes of workers, also regulates incidentally the same work when performed by the employer himself".

It appears by the terms of reference and is admitted in the oral declarations made before the Court by the representatives of the organizations concerned that the question submitted to the Court is general, and does not relate to any particular branch of industry. For this reason, the conditions of the baking industry, which have been taken into account in the proposed convention concerning nightwork in bakeries, have not been specifically considered by the Court for the purpose of the present Opinion, except by way of illustration. No conclusions, therefore, as to what kind of legislation such conditions may justify in any particular case can be drawn from the answer given by the Court to the question before it. [13]

It is further made clear by the terms of the Request that the Court is not called upon to deal with the work of the employer in general, but only in so far as such work is the same as that of the worker and as its regulation is incidental to a regulation proposed in order to protect certain classes of workers and to assure such protection.

Finally, under the terms of reference, it is obvious:

(a) that the labour legislation contemplated in the question, i. e. legislation for the protection of wage-earners, is assumed to be within the competence of the International Labour Organization subject to the question as to its incidentally regulating the work of the employer;

(b) that the proposed regulation of the work of the employer is to be assumed to be really incidental to labour legislation admittedly within the competence of the International Labour Organization;

(c) that the word "workers" refers only to wage-earners. This is in accordance with the sense of the English text and also with the language of the French text, which uses, as the equivalent of "workers", the words *travailleurs salariés*. The Court is therefore to treat the English text as if it spoke of "labour legislation which, in order to protect certain classes of wage-earners, also regulates incidentally the same work when performed by the employer himself".

The Court is not asked for an opinion as to the existence of any general power to regulate work done by the employer. Such power has not been claimed for the International Labour Organization and, by the very terms of the question, this phase of the subject seems to have been deliberately excluded from the consideration of the Court. The question speaks simply of "competence", and assuming, as it manifestly does, that the International Labour Organization has competence to propose labour legislation for the protection of wage-earners, generally or by classes, asks whether the Organization can exercise this competence in a case in which the legislation proposed for the protection of the wage-earner would incidentally regulate the same work when performed by the employer himself. [14]

The question put by the Council, in the opinion of the Court, further proceeds on the assumption that the employer, when performing the same work which is performed by the wage-earners, does not normally fall within the competence of the International Labour Organization in respect of such work. It is clear that if the regulation of the personal work of the employer is normally within the competence of the International Labour Organization, no doubt could arise as to the competence in the case now before the Court. On the other hand, the Organization may be competent in the case put in the question even if it is not competent to deal generally and primarily with the personal work of the employers. The question is intended to ask whether, on such hypothesis, a regulation of the personal work of the employers may be proposed by the International Labour Organization incidentally and in order to protect certain classes of wage-earners.

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The question put to the Court is manifestly a question of law, the answer to which depends upon the terms of Part XIII of the Peace Treaty of Versailles of June 28th, 1919, by which the competence of the International Labour Organization is defined. This Part of the

Treaty is entitled "Labour" and consists of two Sections. The first of these Sections is entitled "Organization of Labour" and consists of a preamble together with Articles 387 to 426, and an annex. The second of these Sections consists only of Article 427, and is entitled "General Principles".

The International Labour Organization consists (Article 388) of (1) a General Conference of representatives of the Members, and (2) an International Labour Office controlled by a Governing Body.

Turning to the stipulations which relate to the sphere of activity of the International Labour Organization, we find that Article 387 of the Treaty declares that the Organization was "established for the promotion of the objects set forth in the Preamble".

The Preamble opens (paragraph 1) with a recital that the League of Nations has for its object the establishment of "Universal peace", and that such a peace can be established only if it is based on "social justice". [15]

The Preamble then goes on (paragraph 2) to recite that conditions of labour exist "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled", that "an improvement of those conditions is urgently required, as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of, freedom of association, the organization of vocational and technical education and other measures".

Finally, the Preamble recites (paragraph 3) that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

After these recitals, the High Contracting Parties declare (paragraph 4) that, "moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the

world", they agree to the provisions establishing the International Labour Organization for the promotion (Article 387), as has already been pointed out, "of the objects set forth in the Preamble".

This specification of the objects of the Organization is supplemented by Article 427 of the Treaty. This article does not define or limit the powers of the Organization but only emphasizes the importance, from an international point of view, of the welfare of wage-earners, and sets forth certain principles as being of special and urgent importance. The first of these is that labour should not be regarded merely as a commodity or article of commerce; and, in addition to this, mention is made, among others, of the right of association for all lawful purposes by the employed as well as by the employers; the payment of an adequate wage; the adoption of an eight hours' day or a forty-eight hours' week, and of a weekly rest of at least twenty-four hours, to include Sunday wherever practicable; the abolition of child labour and the limitation of the [16] labour of young persons; the payment to men and women of equal remuneration for work of equal value; the fixing in each country of a legal standard as to the conditions of labour for all lawfully resident workers; and the establishment by each State of a system of inspection in which women should take part. But it is declared that this enumeration is not claimed to be "either complete or final".

As it is evident that the measures adopted for the attainment of these objects may, generally speaking, affect the rights and interests of employers as well as of the employed, provision is made for the separate representation of both classes. While all the persons composing the General Conference are called (Article 388) "Representatives of the Members", i. e. of the governments concerned, and are nominated by such Members, yet provision is made for the distinctive representation of employers as well as of the employed (Article 389). So, in the constitution of the Governing Body, by which the International Labour Office is controlled, twelve of the twenty-four persons of whom the Body is composed are described as "representing the governments", while six represent the "employers", and six the "workers" (Article 393).

Operating under this control, the International Labour Office (Articles 394-398) collects and distributes information, conducts studies and investigations, prepares the agenda for the

meetings of the Conference, and exercises such powers and performs such duties as the Conference may assign to it.

An examination of the provisions of the Treaty shows that, while the competence of the International Labour Organization, so far as concerns the investigation and discussion of labour questions and the formulation of proposals, whether for national legislation or for international agreements, is exceedingly broad, its competence is almost wholly confined to that auxiliary form of activity. The most important, if not the only exception to this rule may be found in the power given to the Organization (Article 408) to deal with the annual reports of Members concerning their enforcement of international conventions, and (Articles 409-420) to consider and, [17] by means of a Commission, to inquire into complaints against Members regarding the observance or enforcement of such conventions. The Organization has no legislative power. Each Member is free to adopt or to reject any proposal of the Organization either for a national law or for an international convention. The Treaty requires each Member, without regard to how its representative has voted at the Conference, to lay any such proposal before the proper authorities for the enactment of legislation or other action, but further expressly provides (Article 405, paragraph 8) that if no action upon it is taken "no further obligation shall rest upon the Member".

The terms in which the objects committed to the International Labour Organization are stated are so general that, as the Court remarked in its second Advisory Opinion, "language could hardly be more comprehensive"; but it must be observed that the Treaty itself provides a way by which objection may be made to the inclusion of a particular matter in the Organization's activities. While the making of recommendations for national legislation and of draft proposals for international conventions is exclusively committed to the Conference (Article 405), the settling of the agenda for the Conference belongs to the Governing Body, half of whose members, just as in the case of the Conference itself, represent the governments. The agenda as thus settled must, however, be transmitted to the governments, and any government may object to the inclusion of any item. Items to which objection is thus made are excluded unless (Article 402) the Conference shall, by two-thirds of the votes cast by the delegates present, decide to include them in the agenda for the following meeting. After an item is placed on the agenda, a

recommendation or draft convention can be adopted by the Conference only by a similar two-thirds majority (Article 405, paragraph 2).

Thus, wholly apart from the reference of any question or dispute to the Court (Article 423), the Treaty provides the means of checking [18] any attempt on the part of the Organization to exceed its competence. In this way the High Contracting Parties have taken precautions against any undue extension of the sphere of activity indicated by the Preamble.

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It results from the consideration of the provisions of the Treaty that the High Contracting Parties clearly intended to give to the International Labour Organization a very broad power of co-operating with them in respect of measures to be taken in order to assure humane conditions of labour and the protection of workers. It is not conceivable that they intended to prevent the Organization from drawing up and proposing measures essential to the accomplishment of that end. The Organization, however, would be so prevented if it were incompetent to propose for the protection of wage-earners a regulative measure to the efficacious working of which it was found to be essential to include to some extent work done by employers. If such a limitation of the powers of the International Labour Organization, clearly inconsistent with the aim and the scope of Part XIII, had been intended, it would have been expressed in the Treaty itself. On the other hand, it is not strange that the Treaty does not contain a provision expressly conferring upon the Organization power in such a very special case as the present.

Not only does the entire framework of Part XIII justify the inference that the International Labour Organization is not excluded from proposing measures for the protection of wage-earners because they may incidentally regulate the personal work of the employers, but there are specific provisions of the Treaty, in the application of which, as they are generally understood, it may be assumed that the incidental regulation of the personal work of the employers is potentially involved.

One instance is the regulation of the hours of work (Part XIII, Preamble), and the adoption of a weekly rest of at least twenty-four hours, which shall include Sunday wherever practicable (Article 427, Principle 5). It is notorious that, in the application of these principles,

before as well as since the Treaty of Versailles, it has been a common thing to require the closing of shops, factories and [19] places of business within certain hours of the day, or on certain days of the week, thus suspending and regulating the particular kind of work, whether performed by the employer or by the employed. In the documents before the Court there are examples of such legislation in regard to the baking industry. A similar and familiar case is that of the regulation of the industry of barbers.

The prohibition, by the International Convention of 1906, of the use of white phosphorus in the manufacture of matches has also been cited: by Article 1 of this Convention the High Contracting Parties bind themselves to prohibit in their respective territories "the manufacture, importation and sale of matches which contain white (yellow) phosphorus". It is true that, in the arguments before the Court, there was some controversy as to the motives inspiring the adoption of this last measure. But, so far as concerns the specific question of competence now pending, it may suffice to observe that the Court, in determining the nature and scope of a measure, must look to its practical effect rather than to the predominant motive that may be conjectured to have inspired it. Moreover, the High Contracting Parties, in incorporating in Part XIII, relating to "Labour", a provision for the first meeting of the General Conference (see Article 426, Annex, entitled "First Meeting of Annual Labour Conference, 1919") themselves included in the Agenda of the Conference "the extension and application" of the Convention prohibiting "the use of white phosphorus in the manufacture of matches". The measure was thus treated as falling within the sphere of labour legislation; and this may be regarded as a contemporaneous practical interpretation made by the High Contracting Parties of the scope of the competence which they had conferred upon the International Labour Organization.

Among the measures proposed by the International Labour Organization the Court may also notice the Convention concerning the use of white lead in painting. By this Convention Members of the Organization undertake to prohibit various uses of white lead and sulphate of lead and of all products containing those pigments except in certain specified cases; and in these cases they undertake to prohibit the employment of males under 18 years of age [20/3] and of any females, with certain exceptions. It appears from a document filed by the International Labour Organization that at least eleven governments have already ratified this Convention, and

the attention of the Court has not been called to any objection made to the competence of the Organization to draw up and propose it.

It is not an unusual thing, in countries in which legislative power is limited by a fundamental charter, for the Courts, in deciding whether certain legislation is constitutional, or *intra vires*, to resort to practice, national or international, for the determination of the extent of a particular governmental power. On this principle illustrations from existing labour legislation might be multiplied; but the examples already given are precise and pertinent and will suffice.

Moreover the Court, in answering the enquiry now before it, may advert to some of the reasoning employed in its third Advisory Opinion. In the case of its second Advisory Opinion, the Court was asked to answer the enquiry whether the competence of the International Labour Organization extended "to international regulation of the conditions of labour of persons employed in agriculture". This enquiry the Court answered in the affirmative. But, while the question was pending before the Court, it was asked to render an opinion upon the further question whether the examination of proposals for "the organization and development of methods of agricultural production, and of other questions of a like character", fell within the "competence" of the International Labour Organization. The Court held that the answer to this question must "depend entirely upon the construction to be given" to Part XIII of the Versailles Treaty "from which alone that Organization derives its existence and its powers", and decided that, tried by this test, the organization and development of the means of production were "not committed to the Organization". But, while holding this to be the case, the Court, in order to guard against a too extensive interpretation of its answer, took care to say that it did not follow that the Organization "must totally exclude from its consideration the effect upon production of measures which it may seek to promote for the benefit of the workers"; and that, while, broadly [21] speaking, any effect which the performance by the Organization of its functions under the Treaty might have on production was only "incidental", yet it was evident that the Organization could not be "excluded from dealing with the matters specifically committed to it by the Treaty" on the ground that this might "involve in some aspects the consideration of the means or methods of production", or of the "effects" which the proposed measures would have upon production.

It is true that Opinion No. 3 deals with incidental effects on production whilst the question now pending before the Court concerns incidental regulation of the personal work of the employer. No sharp line can, however, in practice be drawn between incidental effect and incidental regulation, and the question whether the effect or the regulation is primary or only, incidental cannot depend upon the mere circumstance that the employer is or is not mentioned in the proposed legislation. It follows, therefore, from the reasoning cited from Opinion No. 3 that, if it is assumed for the purpose of the argument that the competence of the International Labour Organization is limited to the work of the wage-earner, the Organization is not excluded from proposing regulations for the protection of wage-earners because such regulation may have the effect of regulating at the same time and incidentally the work of the employer.

Other reasons might be given for the conclusions at which the Court has arrived, but the Court refrains from discussing them because this might take it into domains which have been deliberately excluded from the scope of the question put.

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The question put to the Court has been argued before it both in writing and orally, and the discussions, especially in the written documents, cover a wide range of topics, including national sovereignty, individual liberty, and various controversial theories of society and government. If these topics, which have to some extent, a political character, and which are constantly debated in national [22] assemblies when the enactment of labour and other legislation is pending, were considered in the framing and adoption of Part XIII of the Peace Treaty of Versailles, this was natural and unavoidable, as the making of laws, whether national or international, is a political act and as such may involve the application of political principles. That such topics were considered in the framing and adoption of Part XIII may be inferred from the express reservation by the High Contracting Parties, as regards the enactment of international as well as of national measures, of their full, free, individual legislative power, carrying with it the exclusive right to determine, each for itself, what political principles and social theories should be applied within the national jurisdiction. On the other hand, the High Contracting Parties must be assumed to have acted deliberately in providing for the co-operation, strictly limited as it is, of the

International Labour Organization in the exercise of their sovereign powers in respect of labour measures, national and international.

In this connection, and especially with regard to national sovereignty, it may be observed that arguments, similar to those just mentioned, were addressed to the Court four years ago, when it was asked to give an advisory opinion on the question whether the competence of the International Labour Organization extended "to international regulation of the conditions of labour of persons employed in agriculture". The Court answered this question in the affirmative, and in the course of its opinion said:

"It was much urged in argument that the establishment of the International Labour Organization involved an abandonment of rights derived from national sovereignty, and that the competence of the Organization therefore should not be extended by interpretation. There may be some force in this argument, but the question in every case must resolve itself into what the terms of the Treaty actually mean, and it is from this point of view that the Court proposes to examine the question." [23]

So, in the present instance, without regard to the question whether the functions entrusted to the International Labour Organization are or are not in the nature of delegated powers, the province of the Court is to ascertain what it was the Contracting Parties agreed to. The Court, in interpreting Part XIII, is called upon to perform a judicial function, and, taking the question actually before it in connection with the terms of the Treaty, there appears to be no room for the discussion and application of political principles or social theories, of which, it may be observed, no mention is made in the Treaty.

It has been argued that measures for carrying out the principles laid down in Conventions proposed by the International Labour Organization fall within the domain reserved to the Members who ratify the Conventions, and that it would therefore be exclusively for such Members to initiate and carry out measures to secure, as, for instance, by incidentally regulating the same kind of work of the employer, the protection of the worker under a Convention which they have adopted. In this respect the Court observes that Part XIII makes no distinction between principles and provisions to ensure their application. A distinction of this kind would indeed lead

in practice to insuperable difficulties and it is entirely in conformity with the broad wording of the above-mentioned Preamble that it should be left to the Labour Conference itself to decide if and in what degree it is necessary and opportune to embody in a proposed Convention provisions destined to secure its full execution. The International Labour Organization no doubt has at its disposal, with a view to the carrying out of Conventions proposed by it, the special procedure provided for in Articles 409-420; nevertheless, the Conference itself may, in the first instance, include in its proposed Conventions provisions calculated to ensure as far as possible the realization of their object.

Controversy, of course, may arise, at different stages of the procedure of the International Labour Organization, as to whether a specific proposal for the regulation of the personal work of the employer (*patron*) would be primary rather than "incidental", and therefore alleged to be outside the competence of the Organization. Obviously, such a question involves the exercise of judgment by the proper authorities on the circumstances of each case as it [24] may arise, and Part XIII, Article 423, of the Versailles Treaty provides that "any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice". The Court does not intend to indicate the limits of any discretionary powers which the International Labour Organization may possess as regards the making of incidental regulations. The Court would exceed its own competency should it essay to consider controversial cases, actual or hypothetical, on which its opinion is not asked, and to intimate what, in its judgment, the decision upon them should be.

For these reasons,

The Court is of opinion

That it is within the competence of the International Labour Organization to draw up and to propose labour legislation which, in order to protect certain classes of workers, also regulates incidentally the same work when performed by the employer himself.

Done in English and in French, the English text being authoritative, at the Peace Palace,

The Hague, this twenty-third day of July, one thousand nine hundred and twenty six, 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) Max Huber,

President.

(Signed) A. Hammarskjold,

Registrar.

[25] Annex.

- A. — Documents transmitted by the secretary-general of the League of Nations on April 17th, 1926, in accordance with the resolution adopted by the Council of the League of Nations on March 17th, 1926:

Certified true copy of the proposed Draft Convention on nightwork in bakeries, adopted in 1924 by a provisional vote of the International Labour Conference at its Sixth Session (in French and English).

Certified true copy of the Draft Convention on nightwork in bakeries, adopted in 1925 by the International Labour Conference at its Seventh Session (in French and English).

Printed verbatim report of the proceedings of the Sixth Session of the International Labour Conference (in French and English).

Printed verbatim report of the proceedings of the Seventh Session of the International Labour Conference (in French and English).

Certified true extracts from the minutes of the Thirtieth Session of the Governing Body of the International Labour Office (fifth and sixth sittings).

- B. — Documents transmitted by the international federation of trades unions and annexed to the memorandum filed by that organization:

I. — Summary of the manifestos against nightwork in bakeries, adopted by the International Congress of Workers in the Baking Trade, at Cologne, on October 14th and 15th, 1922 (in French and English).

II. — Text of the resolution in favour of the maintenance of the prohibition and

of the complete abolition of nightwork in bakeries, adopted by the International Congress of Workers in the baking trade at Berne, on April 23rd, 1924 (in French and English).

III. — *Industrial and Labour Information*, Vol. XVI, No. 4 (in French and English).

IV. — Report on nightwork in bakeries. International Labour Office, Geneva, 1924 (in French and English).

V. — Letter from the Chairman of the Council of the Federal Capital City of Vienna to all local municipal authorities, dated February 10th, 1923 (in French, English and German).

VI. — Report on the situation in Holland as regards nightwork in bakeries (in French and English). [26]

VII. — *Revue Internationale de la Boulangerie*, first year, No. 1 (November, 1924).

VIII. — Original letter of the Central Union of the German bakers' corporations *Germania* to M. Jean Schifferstein, Zurich, 4, Körnerstrasse 12, dated March 10th, 1926 (in French, English and German).

VIII *a.* — Speech made by M. Heinrich Müller at the Sixth Session of the International Labour Conference (in German).

IX. — Original letter from the Association of Master Bakers in small and medium-sized bakeries in the Ile-de-France, to Senators, dated April 10th, 1926 (in French and English).

X. — Original contract of association between Madame Darribehaude (widow)

and Messrs. Sampieri Camille and Bergeron Gilbert, dated August 31st, 1922 (in French and English).

C. — Documents transmitted by the international organization of industrial employers:

Opinion given by Messrs. Berthelemy, Le Fur and Julliot de la Morandiere.

Opinion given by Sir Leslie Scott and Mr. E. J. Rimmer.

D. — Additional documents placed at the court's disposal by the director of the International Labour Office:

1. — Text of the Draft Conventions and Recommendations adopted by the International Labour Conference during its first seven Sessions (in French and English).
2. — Questionnaire regarding nightwork in bakeries, sent by the International Labour Office to governments before the Sixth Session of the Labour Conference (in French and English).
3. — Report and supplementary Report on nightwork in bakeries, drawn up in accordance with the answers of governments to the questionnaire of the International Labour Office (in French and English).
4. — Report to the Seventh Session of the Conference, containing amendments submitted by governments to the proposed Draft Convention on nightwork in bakeries, which had been provisionally adopted by the Conference at its Sixth Session (in French and English).
5. — Statement showing the position as regards ratification of the Convention concerning the use of white lead in painting on May 1st, 1926.
6. — Table showing legislation in various countries regarding nightwork in bakeries.

7. — Collection of examples of restrictions imposed by law on the free exercise of their professions by employers.