REPORT III

International Labour Conference

FIFTEENTH SESSION
GENEVA, MAY 1931

Partial revision of the Convention concerning employment of women during the night

Item III on the Agenda

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INTRODUCTION

The Governing Body of the International Labour Office decided at its Fifty-first Session (Geneva, 28-31 January 1931) to place upon the Agenda of the Fifteenth Session of the International Labour Conference the question of the partial revision of the *Convention concerning employment of women during the night,* in respect of the following points :

(a) *Insertion in the Convention of a clause specifying that the Convention does not apply to parsons holding positions of supervision or management ;*

(b) *Insertion in Article 2 of the Convention of a provision authorising the Members of the Organisation to substitute for the interval 10 p. m. to 5 a. m., during which night work is absolutely prohibited, the interval 11 p. m. to 6 a.m.*

The above decision was taken by the Governing Body on the occasion of its examination of the report on the working of the Convention which it is obliged, under Article 14 of the Convention, to present to the Conference at least once every ten years.

That report, containing all the information which was available to the Governing Body concerning the working of the Convention, together with the documents relating to the consultation of the Governments by the Governing Body on certain proposals for the revision of the Convention, and a summary of the discussion which led the Governing Body to the above conclusion, is before the Conference with the title " Report of the Governing Body of the International Labour Office upon the working of the Convention concerning employment of women during the night ".

It will suffice to recall here that when the Governing Body undertook the first examination of this report (Forty-ninth Session, June 1930), proposals were made by the Swedish, British and Belgian Governments for the partial revision of the Convention. The Governing Body decided that the question of placing the revision of the Convention on the Agenda of the Conference should

be further pursued and a general consultation of all the Members of the Organisation accordingly took place, special attention being drawn to the proposals of the Swedish, British and Belgian Governments.

After examining the observations which the Governments furnished in response to this consultation, the Governing Body decided to place on the agenda of the Conference the partial revision of the Convention in respect of the two points indicated above.

In order that the effect of this decision may be quite clear it may be useful to recall the terms of para. 1 of Article 6 (a) of the Standing Orders of the Conference which provide that " in accordance with Article 400 of the Treaty of Versailles, and subject to the provisions of Article 402 (3) of the said Treaty, the Conference shall not revise in whole or in part a Convention which has previously been adopted by it save in respect of the question or questions placed by the Governing Body on the agenda of the Session ".

The Fifteenth Session of the Conference can accordingly only revise the Convention concerning employment of women during the night as regards the two specific points which the Governing Body has placed on the agenda.

Thus the limits of the action of the Conference are defined in exactly the same way as they are defined in the case of any other item placed on its agenda by the Governing Body.

It is, however, free to adopt any solution within the scope permitted by its agenda.

Under para. 1 of Article 6 (a) the International Labour Office is obliged to submit *draft amendments* which may serve as a basis for the Conference's discussion. The purpose of the present report is to furnish to the Conference these draft amendments.

The Office's task in preparing the present report is therefore exactly analagous to that which it has to pursue in an ordinary Blue Report in that it has to submit draft texts to the Conference. The draft texts submitted to the Conference in an ordinary Blue Report are, however, based on the replies to a questionnaire, whereas in the present case the Standing Orders assume that the Report on the working of the Convention and the consultation of the Governments concerning the necessity for revision make further consultation by questionnaire unnecessary.

The Office has accordingly proceeded to draw up draft amendments for consideration by the Conference taking into account (1) the experience of Governments which have ratified the Convention as revealed in the reports sent in under Article 408 of the Treaty of Versailles ; (2) the statements submitted by the Governments responsible for proposing the revision of the Convention in respect of the two points finally selected by the Governing Body ; (3) the observations of other Governments on these points, and (4) the discussions of the Governing Body itself. The draft amendments drawn up by the Office after an examination of this information are given at the end of the present volume. They are preceded by a brief statement explaining the reasons which appear to the Office to justify the form in which they are put forward.

GENERAL SURVEY OF THE QUESTION AND DRAFT AMENDMENTS

Point A.

Insertion in the Convention of a clause specifying that the Convention does not apply to persons holding positions of supervision or management.

In its annual report on the working of the Convention during the year 1928 submitted in 1929 under Article 408 of the Treaty of Versailles the British Government drew attention in the following terms to a difficulty which it had encountered in applying the Convention in Great Britain :

" Representations have been made to H. M. Government that the absence of any provision in this Convention similar to that contained in Article 2 (*a*) of the 48 Hours Convention, excluding from the scope of the Convention persons holding positions of supervision or management, must have the effect of debarring women altogether from entering upon certain employments in which continuous working is necessary. In particular, complaint has been made that women trained as professional engineers are precluded from holding controlling posts in electrical power undertakings, by reason of the fact that they are prohibited from working at night. It may be added that the night employment in question is equally prohibited by the Factory and Workshop Acts now in force in this country, but it has been proposed in the amending and consolidating Factories Bill which has been under consideration to

except from the general provisions governing the hours of employment of women, persons holding responsible positions of management and not usually employed in manual labour ".

This point received special attention from the Committe of Experts on Article 408 in 1930, and its report to the Governing Body in that year contains the following passage :

" *General remark.* — A member of the Committee pointed out that this Convention does not contain any clause similar to Article 2 (*a*) of the Convention on Hours of Work, which provides that the provisions of that Convention shall not apply to persons holding positions of supervision or management or to persons employed in a confidential capacity. He drew the attention of the Committee to the fact that as a result of this omission the Convention on night work of women resulted in women being excluded in the countries which ratify the Convention from any post of supervision, etc. involving night work.

It is true that when the Convention was drawn up it was doubtless very rare for positions of this kind to be occupied by women and this is no doubt the reason why no exception similar to that contained in Article 2 (*a*) of the Convention on hours of work was inserted in this Convention. The employment of women at night in positions of supervision or management or in a confidential capacity is still rare and it is hardly likely that it will become frequent. In any case it does not appear to be of any importance from the point of view of international competition.

Since, however, it is difficult to interpret the absence of any express stipulation on this subject in the Convention as implying that the employment at night of women in such positions is authorised, the Committee thinks it desirable to request the Governing Body to take account of the above observation in the event of revision of the Convention being subsequently contemplated."

In June 1930, at its Forty-ninth Session, the Governing Body had to consider the "ten-yearly" report on the working of the Convention, and to decide whether the question of placing the revision of the Convention on the

agenda of the Conference should be further pursued. On that occasion the British Government forwarded to the Office for communication to the Governing Body a letter recalling the difficulty to which reference had been made in the Annual Report submitted in 1929, and stating that the representative of the British Government on the Governing Body would propose that the possibility of revising the Convention on this point should be further considered.

The object of the proposal is to make it clear that the Convention does not cover certain classes of women whom, in fact, so far as the Office is aware, no Government and no organisation has expressed a desire to see brought within the Convention's scope. Opposition has been raised to the British Government's proposal solely on the ground that it is reasonable to interpret the text of the Convention as it stands as excluding such women.

Thus, the Belgian Government, in its reply to the Office's letter of 18 August 1930, observes that " the Washington Convention is based on the Berne Convention which covers working women *(ouvrières)* exclusively ; it is therefore not applicable to women occupying posts of management or supervision . . . . . For this reason the Belgian Government cannot give its support to the proposal of the British Government.

The Italian Government, in its reply to the same letter, observes that " it is clearly established by the statements recently made in the Governing Body of the International Labour Office by the Chairman of the Governing Body that the scope of application of the Convention is limited to working women. This being admitted, it should be remembered that if the need for revision on this point is admitted, the consequence will be that the Convention will be interpreted in an excessively wide manner, which would involve its application to all female employees who cannot be regarded as manual workers, subject to the proposed exception for women employed in positions of supervision or management. The Royal Authorities accordingly consider that it is desirable to maintain the *status quo* as regards this contested point of the Convention, especially as a strict interpretation of the Convention

permits the points which led to the revision proposal to met without the need of any amendment."

The Government of Rumania also considers that " revision of the Convention is not necessary because it is quite clear, as was shown by the French Government representative at the 49th Session of the Governing Body, that the Washington Convention only refers to working women (the distinction between working women and women employed in a supervisory capacity is made by national law)".

Mr. Arthur Fontaine, speaking on behalf of the French Government at the 49th and 51st Sessions of the Governing Body, expressed an opinion identical with that embodied in the replies of the above three Governments, and similar views were also expressed by members of the workers' group of the Governing Body.

Nevertheless, however strong may be the grounds existing for holding that the Convention as it stands does not apply to women holding positions of supervision or management, it must be borne in mind that the difficulty to which the British Government has drawn attention is a practical difficulty actually encountered in a country which has ratified the Convention, and that if the courts of law of Great Britain find it impossible to interpret the text of the Convention as embodied in British legislation as exempting the classes of women referred to, the difficulty is one that cannot be solved by reference to the opinions of persons or bodies outside Great Britain as to the correct interpretation of the Convention.

The Governments of Germany and India, while supporting the British Government's proposal for revision in order to put the matter beyond a doubt, also interpret the Convention as not applying to women holding positions of supervision or management.

The Government of Austria, in its reply, supports the British Government's proposal, observing that " even in the case of countries such as Austria, in which the question is not for the moment of practical importance because at the present time there are no women holding positions of management in industrial undertakings of the kind mentioned in Article 1 of the Convention in which night work is regularly done, it would appear that a distinction between women holding positions of management and working

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women as regards the prohibition of night work is likely to be of importance for the future. The fact that the number of women students in institutions for higher education in Austria has been steadily rising in recent years makes it justifiable to suppose that in the near future women will attain to positions of management in the industrial undertakings in question in Austria."

The Government of Norway also supports the proposal, and states that the competent Norwegian Ministry " has taken it for granted that the Convention in question applies to all women employed in undertakings covered by the Convention irrespective of the nature of their work."

The Government of Sweden " considers that this question is also of interest to Sweden ", and supports the revision proposal, though it points out that " it will be necessary to draft any clause which may be adopted on the question of this distinction in such a way as not to allow the prohibition of night work to be evaded."

The Governing Body, convinced by the above arguments, decided to accede to the British Government's request to place the question of " the insertion in the Convention of a clause specifying that the Convention does not apply to persons holding positions of supervision or management " on the agenda of the Conference.

In drafting a text for the amendment of the Convention, in order to meet the British Government's difficulty, great care must be taken not to go further than the Governing Body or the British Government intended. It is true that, taken by itself, the use of the term " persons holding positions of management " does not appear to involve any such danger. On the other hand, the term " persons holding positions of supervision " might perhaps be interpreted as having a very extensive application. The Swiss Government in its reply has drawn attention to the possible difference of meaning between the two terms. It says: " it is possible to exempt women engaged in management from the prohibition of night work under the Convention by means of interpretation. If it is only intended to make an exception for this class of persons, revision does not seem to be necessary. The position might, however, be different if the exception were to apply to

women engaged in supervision. It seems doubtful whether in that case it would be possible to proceed by interpretation and whether the Convention would not have to be revised. "

On the other hand, it appears certain that no clear distinction, much less a contrast, is intended either by the British Government or by the Governing Body to be drawn between the words " supervision " and " management ". [1] Both words are, it is thought, intended to mean substantially the same thing and appear to be used conjointly for the sake of completeness. The persons referred to are employees in the higher ranks of the industrial hierarchy. The particular case quoted by the British Government as an example — " controlling positions in electrical power undertakings " — confirms this interpretation. The possibility must, however, be faced that if the amending clause simply declares that " the Convention does not apply to persons holding positions of supervision or management " the term " position of supervision " might be interpreted by some countries in contradistinction to " management " as covering purely subordinate positions involving, for instance, the mere supervision, minding or watching of machinery, plant or premises. The door would thus be open for the exemption of workers whom neither the British Government nor the Governing Body desires to see excepted from the application of the Convention.

It is possible to guard against the eventuality of such an interpretation in two ways: (a) by inserting in the Convention a limitative list of the occupations exempted, or (b) by defining the term " supervision " in such a way as to make it clear that the Convention applies to all women employed in industrial undertakings other than those belonging to the strictly limited class as to whose exemption there appears to be general agreement. The first method would perhaps make for greater preci-

[1] The two words are used in conjunction in Article 2 of the Washington Hours Convention, which provides that " 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 phraseology was taken over apparently without discussion from the draft submitted by the Organising Committee for the Washington Conference.

sion, and the Office has therefore given serious thought to the possibility of adopting it. It has, however, been forced to conclude that the difficulty of drawing up such a list applicable internationally would be too great. The Office therefore prefers the second alternative.

In its search for the best means of defining the classes of workers covered, the Office was at first tempted to introduce a reference to the degree of responsibility involved in the position held by such workers. This idea is no new one, and the Office has already had recourse to it for the purpose of defining the extent of the exception allowed under Article 2 (a) of the Washington Hours Convention. In reply to a question submitted to it by the Swiss Government in 1920 it replied that, in its opinion, " this paragraph applies exclusively in general to persons occupying a post involving responsibility in a considerable degree ".[1] While, however, the notion of responsibility is one which may assist Governments in interpreting the above-mentioned clause of the Hours Convention, its actual use in a Convention or in a national law would, in the Office's opinion, be open to the objection that such a term might give rise to considerable divergencies of interpretation. Thus, for example, bad work by a manual labourer may in certain cases involve very serious accidents, and to that extent many manual labourers might be considered to hold positions of responsibility.

The British Government itself has indicated what appears to be a more suitable criterion in its annual report on the working of the Convention during the year 1928 (quoted above), where it refers to a proposal to except " persons holding responsible positions of management and *not usually employed in manual labour* ". An identical criterion has also been adopted in the proposed Draft Convention limiting hours of work of underground workers in coal mines, drawn up by the Conference at its last Session. The problem which the Preparatory Technical Conference and the International Labour Conference had to solve with regard to coal mines appears to be essentially the same problem as that raised in the British Government's proposal for revision of the Convention concerning employment of women during the night. It was desired

[1] *Official Bulletin* of the International Labour Office, Vol. III, p. 391.

to except from the provisions of the Draft Convention persons whose work it would be " very difficult if not impossible to control by regulations " owing to the supervisory or managerial nature of their functions. The definition devised by the Technical Conference and maintained in the text of the proposed Draft Convention as reproduced in the Questionnaire on Hours of Work in Coal Mines drawn up for the Fifteenth Session of the Conference is as follows : " persons engaged in supervision or management *who do not ordinarily perform manual work* ". The Office thinks that this definition is the most likely to prevent abusive interpretations, and therefore proposes the following draft amendment :

' In Article 3 of the Convention insert a second paragraph worded as follows :

> " This Convention does not apply to persons engaged in supervision or management who do not ordinarily perform manual work. ' "

Point B.

Insertion in Article 2 of the Convention of a provision authorising the Members of the Organisation to substitute for the interval 10 p.m. to 5 a.m., during which night work is absolutely prohibited, the interval 11 p.m. to 6 a.m.

The proposal to revise the Convention in respect of this question was first brought forward by the representative of the Belgian Government at the 49th Session of the Governing Body. He stated that the Belgian Government would not have asked for the revision of the Convention on this point alone but that if the Governing Body decided to open the revision procedure on other points, he would propose that this point should also be dealt with.

The Belgian Government's proposal, like that of the British Government, is put forward in consequence of a practical difficulty actually encountered in the application of the Convention in Belgium. This difficulty is described in the following manner in a statement subsequently submitted to the Governing Body and communicated to the Governments with the Office's letter of 18 August 1930 [1].

" The only difficulty encountered has been in the case of the wool-combing and spinning undertakings of Verviers. Work in those undertakings is arranged in successive shifts in order to obtain the output from the machinery which is required by economic necessities.

The women employed in these undertakings do not at the present time work more than 88 hours per fortnight. The shifts alternate weekly and the work is arranged in the following way :

One week	6 days of 8 hours	48	hours
The following week	5 days of 8 hours	40	hours
		88	hours

This gives an average of 44 hours per week and 7 hours 20 minutes per day.

It has been found by the factory inspectors that there are serious difficulties in the way of starting the work of the first shift of the day at 5 a.m. This is not convenient for the workers concerned, especially as transport is not available at so early an hour. In order to avoid an immediate stoppage of work and to prevent women workers from permanently abandoning their employment in the factory, the wool spinners of the Verviers district have been obliged to fix 6 a.m. as the earliest hour for the first shift to begin work. It is however clear that in these circumstances it is impossible for each of the two shifts to do 8 hours actual work per day, unless the work of the second shift

[1] The full text of this statement is reproduced in the Report of the Governing Body on the working of the Convention.

is continued after 10 p.m. It is true that the period from 6 a.m. to 10 p.m. includes 2 × 8, or 16 hours, but it should be noted that under the last paragraph of section 6 of the Belgian Act concerning the employment of women and children, girls or women under 21 years of age whose work is organised in successive shifts must be allowed a rest period of not less than half an hour.

It is quite impossible to make different arrangements for the work of women under 21 and the work of older women.

The eight hours' work by each of the two shifts is therefore spread over a period of 8 ½ hours, and this makes it inevitable for the work of the second shift to continue after 10 p.m., although it is never continued later than 11 p.m.

These are the circumstances which have led the Belgian Government to ask that the possibility of amending Article 2 of the Convention concerning the employment of women during the night should be considered. The proposal is that the term " night " should continue to signify a period of not less than 11 consecutive hours, but that these should necessarily include either the interval between 10 p.m. and 5 a.m. (present system) or the interval between 11 p.m. and 6 a.m. "

In their replies to the Office's letter of 18 August 1930 the Governments of Austria, Germany, Hungary, Italy, Poland and Switzerland state that they have encountered similar difficulties.

The principal danger which might be involved in too lax a drafting of the proposed amendment is that to which the Italian Government has drawn attention in the following terms : " It is, however, thought that this proposal, which tends in particular to fix the starting point of the period in question at 10 p. m. or 11 p. m. and its close at 5 a.m. or 6 a.m., might lead to abuse and fraudulent action, as it would be very difficult to keep any check on the time for the beginning of the period adopted by any particular undertaking. The Royal Authorities therefore consider that the times at present laid down for the beginning and end of the period — i.e. 10 p.m. and 5 a.m. — should be maintained as the rule. The period from 11 p.m. to 6 a.m. could be allowed as an exception, in particular cases, by the competent authorities, after consultation with the employers' and workers' organisations concerned. "

The Swiss Government, moved by similar considerations, puts forward the following proposal: " The new rule might be not that the period from 10 p.m. to 5 a.m. could be replaced at the discretion of each country by that of 11 p.m. to 6 a. m..... but on the contrary that a displacement of the prohibited period by one hour might be allowed as an exception under certain conditions and by special permission of the authorities. If greater latitude is left to individual countries, there is a danger that the results achieved after long years of effort in one of the most important branches of labour legislation may be compromised. "

The statements of the Belgian Government and the discussions which took place in the Governing Body make it clear that the revision of the Convention on the point in question is not intended to result in a simple shifting of the period of absolute prohibition by one hour at the discretion of individual employers or workers, but simply to allow the substitution, where exceptional circumstances make it impossible for the workers in a given industry or area to comply with the period of absolute prohibition at present laid down by the Convention, of an alternative period of equal length, subject to proper safeguards. Two safeguards are already suggested in the above-quoted replies of the Swiss and Italian Governments, viz., (1) that the substitution of the permitted alternative interval should only be allowed as an exception and by special decision of the competent authorities, and (2) that the organisations of employers and workers concerned should previously have been consulted. The Office feels that there will be general support for the inclusion of these two safeguards in the draft amendment. Further it considers it natural and desirable to insert a provision with the object of securing information on the exceptions allowed in the annual reports submitted under Article 408. It accordingly submits the following text of a draft amendment :

In Article 2 add at the end of the first paragraph the following fresh paragraph:

" Provided that the competent authorities may, in view of exceptional circumstances affecting the

workers in a particular industry or area, and after consultation of the employers' and workers' organisations concerned, decide that for those workers the interval between 11 o'clock in the evening and 6 o'clock in the morning shall be substituted for the interval between 10 o'clock in the evening and 5 o'clock in the morning. Wherever advantage is taken of this provision the Government concerned shall supply relevant information in the annual report provided for by Article 408 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace. "

Text of draft amendments proposed by the Office.

In Article 3 of the Convention insert a second paragraph worded as follows :

" This Convention does not apply to persons engaged in supervision or management who do not ordinarily perform manual work. "

In Article 2 add at the end of the first paragraph the following fresh paragraph :

« Provided that the competent authorities may, in view of exceptional circumstances affecting the workers in a particular industry or area and after consultation of the employers' and workers' organisations concerned, decide that for those workers the interval between 11 o'clock in the evening and 6 o'clock in the morning shall be substituted for the interval between 10 o'clock in the evening and 5 o'clock in the morning. Wherever advantage is taken of this provision the Government concerned shall supply relevant information in the annual report provided for by Article 408 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace. "

Texte des projets d'amendements proposés par le Bureau.

Insérer à l'article 3 de la convention un deuxième paragraphe ainsi conçu :

« La présente convention ne s'applique pas aux personnes occupant un poste de surveillance ou de direction et ne participant normalement à aucun travail manuel. »

Insérer à l'article 2, après le premier paragraphe, un paragraphe nouveau ainsi conçu :

« Toutefois, l'autorité compétente pourra, en raison de circonstances exceptionnelles affectant les travailleurs d'une industrie ou d'une région déterminée et après consultation des organisations patronales et ouvrières intéressées, décider que, pour ces ouvriers, l'intervalle entre onze heures du soir et six heures du matin sera substitué à l'intervalle entre dix heures du soir et cinq heures du matin. Lorsqu'il sera fait usage de cette disposition, le Gouvernement devra fournir des renseignements à ce sujet dans le rapport annuel prévu par l'article 408 du Traité de Versailles et les articles correspondants des autres Traités de Paix. »