FIRST ITEM ON THE AGENDA

Follow-up on the recommendations of the Working Party

Follow-up on consultations concerning the needs for revision and obstacles to the ratification of 13 Conventions

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Introduction

1. This paper is submitted for consideration by the Working Party on Policy regarding the Revision of Standards and contains an analysis of consultations with member States in the course of 1997 with respect to 13 Conventions previously examined by the Working Party. As regards three of these Conventions, the Governing Body invited member States to inform the Office on the need for a full or partial revision of each of them, and, if appropriate, on the form that such a revision might take. As regards the remaining ten Conventions, the Governing Body invited the member States to contemplate ratifying them, and to inform the Office of the difficulties and obstacles encountered, if any, that might prevent or delay the ratification of these Conventions or that might point to the need for a full or partial revision of these Conventions.

2. The above decisions were communicated to member States in June 1997, together with a request to forward their observations to the ILO by the end of August 1997. In total some 43 member States replied to this invitation.\(^{(1)}\)

3. In accordance with the Working Party's recommendation, governments of member States were invited
to undertake tripartite consultations with the social partners in order to implement the decisions by the Governing Body at issue and to forward to the ILO any observations they might wish to make. With few exceptions, the responses received indicated that tripartite consultations had been conducted, and in most cases the views and opinions of the social partners were reflected in the submission communicated to the Office.

4. The present paper complements the other paper before the Working Party under this item on its agenda, entitled "Follow-up on the recommendations of the Working Party", which contains a full account of the follow-up measures undertaken by the Office. The number and the substantive content of the answers received suggested that a case-by-case re-examination of the needs for revision or obstacles to the ratification of the thirteen Conventions at issue should be conducted in a separate document.

I. Consultations on the need for a total or partial revision of certain Conventions and on the form that such a revision might take

I.1. C.127 -- Maximum Weight Convention, 1967

Background

5. In the course of the previous examination of this Convention it was noted, inter alia, that difficulties in the application of the Convention had been reported by the Committee of Experts, that the Convention seemed to require adaptation to modern technology and that modern trends in the area of occupational safety and health seemed to favour a preventive and individual risk assessment approach (irrespective of gender and age) rather than an approach based on predetermined, fixed safety limits as contained in Article 3 of the Convention.

6. In the course of the 1997 consultations, 27 member States commented specifically on the needs for revision of the present Convention. In addition, Greece proposed that the question of the "protection of workers during the manual movement of loads" be included as a proposal in the portfolio of items presented to the Governing Body at its present session.

Needs for revision

(a) Content of the Convention

1. Special rules for women (Article 7)

7. The most frequent argument raised in favour of a revision was the provision in Article 7 prescribing
certain maximum weight limits for women only. Nine member States sought a revision of this provision. *Australia, Germany, Morocco* and the *United Kingdom* all considered that manual handling risks should not be controlled by gender, but in relation to the individual, as the transportation of heavy loads above a certain limit was damaging to the health of all workers. *Denmark, El Salvador* and *Finland* expressed the same idea in other terms. *Switzerland* considered there was no need for a provision such as Article 7.

2. *Risk assessment method*

8. A related argument was submitted by six member States which objected to the approach of the Convention which, in their view, rather should reflect an individual *risk assessment method* aimed at prevention. The *United Kingdom* considered the approach of the Convention "ineffective", and together with *Australia, Belgium, Finland* and *New Zealand* it considered Convention No. 127 to be contrary to the prevailing risk management approach whereby risks were identified, assessed and controlled, and weight was only one of a number of factors to be taken into account when evaluating the risk. New Zealand made a specific suggestion to revise Article 3 in that direction, altering the words "by reason of its weight" to reflect the wider number of factors that, it maintained, now were regarded as important to consider in assessing manual handling tasks including: weight of the object; size and shape of the object; distance of its centre of gravity from the body; starting and ending heights of the lift; frequency of lifting; grips that can be obtained on the object; the person; and the environment.

3. *Technological development*

9. A few other member States considered, more generally, that *technological developments* in this field gave rise to a need for revision of the Convention. *China* and *Sri Lanka* both considered a revision was required to "suit today's context" in view of advances in technology.

4. *European Union law*

10. Two member States referred to relevant European Union law in this field. *Germany* considered that the EU Directive (90/269/EEC) "Manual Transport of Loads" necessitated a revision of Articles 1-6 of the Convention, the deletion of Article 7 and a new title for the Convention, while *Finland* only noted that the substance of the Convention was adequately covered by EU legislation.

5. *Other issues*

11. *South Africa* sought a revision of Article 5 to include a reference to training with respect to the correct techniques of manual lifting and lowering of loads, and *Portugal* wished to see sections V, VI and VII of the Maximum Weight Recommendation, 1967 (No. 127), as part of the Convention.

(b) *Form of a possible revision*

12. Out of a total of 25 member States in favour of a revision, seven (*Brazil, China, Estonia, Italy,*
Jordan, Morocco, South Africa) were in favour of a partial revision of the Convention, three (Chile, Myanmar, Switzerland) were in favour of an additional Protocol to the Convention, while the remaining member States proposed a revision in more general terms. \(^{(7)}\) The reasons for preferring a particular form of revision were not detailed.

(c) Other opinions

13. Three member States were not in favour of a revision. Austria did not "seek a revision of the Convention" and Mexico saw no difficulties in applying the Convention. Egypt, however, considered that the Convention was obsolete due to technical progress and that it should therefore be abrogated.

Remarks

14. There seems to be a clear majority in favour of revision of this Convention and of the view that the revision should mainly be aimed at introducing a gender-neutral, individual risk assessment approach to the question of the manual handling of loads. While most opinions seem to favour a general revision of the Convention, several countries would prefer a partial revision, including a few calls for the adoption of a Protocol to the Convention.

15. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide that there is a need for revision of this Convention, and that a recommendation to that effect be made to the Committee on Legal Issues and International Labour Standards (LILS).

16. However, if the Working Party considers that the information received remains too limited, it could request the Office to undertake a short survey of Convention No. 127. A questionnaire covering the issues raised in paragraphs 7-13 above would be sent to all member States. This survey would also take stock of the technical expertise available within the Office to submit to the Working Party an analysis that would remain short and which would include proposals on the issues raised in the 1997 consultations. Such a solution could dispel any doubts the Working Party may have and provide the Working Party with the information and analysis needed to make a more informed recommendation to the LILS Committee.

Proposals

17. The Working Party is invited --

(a) to recommend to the Governing Body the revision of Convention No. 127 and to include this item in the portfolio of proposals for the agenda of the Conference;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.
**I.2. C.136 -- Benzene Convention, 1971**

**Background**

18. In the course of the examination in March 1997, it was noted, inter alia, that the more recent Chemicals Convention, 1990 (No. 170), provided a general framework in this field, while Convention No. 136 retained its importance in that it determined a specific limit value for permissible benzene content. However, as was suggested already in the late 1980s, the exposure limit value in Article 6 required updating to the internationally accepted limit. A revision of Convention No. 136 could take the form of an additional Protocol to the Convention.

19. In the course of the 1997 consultations, 26 member States commented specifically on the needs for revision of the present Convention.

**Needs for revision**

**(a) Content of the Convention**

1. **Specific articles of the Convention**

20. Suggestions to revise one or more specific provisions of the Convention were made by several member States. The most frequent proposals concerned Article 11. Four member States disagreed with the substance of this provision. According to Denmark there was a need for revision with a view to ensuring the same level of protection for both men and women, as "the need for protection is the same". Australia maintained that the prohibition in Article 11 to employ nursing mothers would breach national anti-discrimination legislation as well as the UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW). According to the United Kingdom, Article 11 of the Convention was "unnecessary and unpracticable". Another type of revision was proposed by Mexico, which wished the second paragraph of Article 11 to be revised to permit national legislation to determine minimum age limits.

21. Mexico also wished Article 3 to be revised to extend the right to temporary exceptions, while Italy considered the same provision to be too flexible. According to the United Kingdom and Denmark Article 9 (health surveillance) was either "unnecessary and unpracticable" or "discriminatory". The United Kingdom considered more generally that ratification of the Convention would be more likely if its application were more flexible, leaving it to individual member States to decide on the best manner to implement it according to their particular national circumstances.
2. Modern technology and practice

22. A revision was necessary in order to make the Convention more adapted to modern technology and practice in the field according to China, Malaysia, New Zealand and South Africa. New Zealand noted that the exposure limits in Article 6(1) were outdated and added that benzene was no longer in use in New Zealand except in some laboratory techniques.

3. European Union law

23. Existing EU guidelines in this area appeared consistent with the Convention to both Germany and Finland, but the latter pointed out that these guidelines should be taken into account in the event of a revision of Convention No. 136.

4. Adaptation to Convention No. 170

24. Both South Africa and Malaysia wanted a revision of this Convention to bring it into line with the Chemicals Convention, 1990 (No. 170).

(b) Form of a possible revision

25. Out of a total of 18 member States in favour of a revision, Brazil, China, Estonia and Italy were in favour of a partial revision of Convention No. 136, while Belgium, Chile, Myanmar, Panama and Sri Lanka suggested the adoption of a Protocol. The remaining nine member States suggested a more general revision. The reasons for preferring a particular form of revision were not detailed.

(c) Other opinions

1. Revision not envisaged

26. Five member States did not see any need for revision of the Convention. According to El Salvador the Convention responded to workers’ needs, and Mexico considered that the Convention was applicable without substantial difficulties. Egypt noted that there was no need to amend the Convention, although their national legislation required amendments before a ratification could be envisaged. Germany considered that from a "technical point of view" there was no need for revision, as the Convention conformed to EU legislation, although it raised more general objections against Conventions limited to regulating specific substances.

2. Continued relevance of the Convention

27. Six member States stated, in different ways, that they questioned the continued relevance of the
Convention. According to four member States the issues regulated by Convention No. 136 were or could be better regulated in the context of other Conventions. Germany, Sri Lanka and Australia preferred Convention No. 170 as a ratification target. Sri Lanka also considered that the matters regulated by Convention No. 136 were adequately covered by Convention No. 170. Germany proposed the inclusion of benzene in the scope of application of the Occupational Cancer Convention, 1974 (No. 139), or of Convention No. 170. More generally, Qatar suggested the preparation of an entirely new Convention aimed at risk prevention related to chemical agents, and both Germany and Denmark questioned the practice of elaborating Conventions regulating individual substances. The latter suggested holding a general discussion on the need for such Conventions. Finally, New Zealand considered the Convention to be obsolete and suggested it be abrogated.

Remarks

28. While a large majority of the opinions expressed seemed to favour a revision of Convention No. 136, particularly of its Article 11, opinions were divided as to whether a full or partial revision was needed. Most calls for revision, however, concerned specific articles of the Convention. At the same time a considerable number of member States considered that there was no need to revise this Convention. Several opinions were also expressed which tended to question the continued relevance of a Convention regulating benzene.

29. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide that there is a need for revision of this Convention, and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available received remains too limited, it could request the Office to undertake a short survey of Convention No. 136 with respect to the issues raised in paragraphs 20-27 above.

Proposals

30. The Working Party is invited --

(a) to recommend to the Governing Body the revision of Convention No. 136 and to include this item in the portfolio of proposals for the agenda of the Conference;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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I.3. C.27-- Marking of Weight (Packages Transported by Vessels) Convention, 1929
Background

31. In the course of the previous examination in March 1997, it was noted, inter alia, that a member State had proposed a revision of this Convention in the late 1980s in order to take into account the increasing use of modern techniques of container transport. Subsequently, the Committee of Experts examined the issue and concluded in 1991 that, in fact, there seemed to be considerable difficulties in applying the Convention to containers. A proposal to include a revision of this Convention had been submitted for consideration by the Governing Body for inclusion on the agenda of the Conference, but had not yet been retained. It was further noted, however, that the reasons invoked for the revision did not seem to be directed at the content of the Convention, but rather at its (limited) scope of application and that therefore an additional Protocol to the Convention concerning the safe handling of containers could be envisaged.

32. In the course of the 1997 consultations a total of 20 member States commented specifically on the needs for revision of the present Convention.

Needs for revision

(a) Content of the Convention

1. Changes in methods of transportation

33. The needs for revision of this Convention almost all focused on updating the Convention in view of changes in the methods of transportation since the adoption of the Convention. Australia, Belgium, China, Egypt, Morocco and Sri Lanka all cited this as a reason for revision. So did Finland, which added that "the difficulty in the case of cargo unit loads is that detailed information on weights is not available prior to loading".

2. Scope of application/additional Protocol (Article 1)

34. El Salvador and New Zealand made a specific proposal to modify the limit of 1,000 kg contained in Article 1. New Zealand added that it was also necessary to consider adverse forces as well as overweight containers. Denmark made a series of detailed proposals to require that the weight be marked also for general cargo units under 1,000 kg, as well as the centre of gravity or heaviest side of the cargo, if the contents are shifted in relation to the centre; that units of cargo weighing more than 1,000 kg should be handled by means of appropriate technical equipment; that the weight of the load should be known in connection with lifting, for example, by cranes; and that the employer should be under an obligation to inform employees, inter alia, of the weight and centre of gravity of the load if this was possible in practical terms. Morocco proposed the adoption of a Protocol regulating that the weight of cargo should be stated in specially designed documents.
35. Germany proposed including container transport in the scope of the Convention and proposed a precise text for an additional Protocol to Article 1 with the following content:

For containers transported by sea or inland waterways, details concerning the gross weight may also be provided through the marking of the maximum total permissible weight as shown on the Safety Licence Plate in conformity with the requirements of the International Convention on Safe Containers (CSC of 2 December 1972).

36. In the opinion of Egypt, a revision would be undertaken, inter alia, to determine that the obligation for marking in Article 1(3) should rest on the State in which the vessel is registered.

3. Other issues

37. Although the question of the marking of weight was mainly relevant for the occupational safety of stevedores it had, according to Finland, wider implications in that it was an issue that also concerned the stability of vessels. Finland wished to see this latter aspect taken into account in the context of a revision of the Convention, and noted that this would imply coordination with pertinent IMO Conventions.

(b) Form of a possible revision

38. A revision of this Convention was proposed by 18 member States, of which two favoured a partial revision and four suggested the adoption of a Protocol, while the remaining 12 member States proposed a revision in more general terms. In the opinion of Belgium a partial revision by the adoption of a Protocol seemed "minimalistic". It was, however, the type of revision favoured not only by Morocco and Germany, as noted above, but also, albeit in more general terms, by Myanmar and Sri Lanka. China and Estonia were in favour of a partial revision, also in general terms.

(c) Other opinions

39. Austria and Argentina did not seek a revision of this Convention and the United Kingdom seriously questioned the continued relevance of this Convention, qualifying it as "unreasonable, unnecessary and without any practical value", suggesting it be abrogated, and adding that the Convention had become particularly redundant since the adoption of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). Qatar proposed that the substance of the Convention should be included in another Convention concerning merchant shipping.

Remarks

40. Among the member States that responded to the request for information, a strong majority emerged in favour of revision of the Convention, mainly in order to adapt the Convention to changes in methods of transportation. Several member States also felt that the scope of application of the Convention should be expanded to include container traffic, that a modification of the weight limit of 1,000 kg was due and
that a more modern risk-assessment approach to the subject should be adopted. A few opinions were expressed, however, to suggest that the Convention was of limited continued relevance.

**41.** The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide that there is a need for revision of this Convention, and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 27 in respect of the issues raised in paragraphs 33-39 above.

**Proposals**

**42.** The Working Party is invited --

(a) to recommend to the Governing Body the revision of Convention No. 27 and to include this item in the portfolio of proposals for the agenda of the Conference;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II. Consultations on intentions to ratify certain Conventions, and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay ratification of these Conventions or that might point to the need for their full or partial revision

II.1. C.156 -- Workers with Family Responsibilities Convention, 1981

**Background**

**43.** In the course of the previous examination in March 1997, it was noted, inter alia, that the importance of this Convention in the overall framework of equality had been underscored by the ILO as well as in other international contexts, but that the Convention had had difficulties in attracting ratifications. The Committee of Experts had also noted obstacles to ratification in a General Survey of 1993, although Article 9 seemed to permit flexible application, and the Committee of Experts considered that there were certain misunderstandings among a significant number of governments and employers' and workers' organizations concerning the purpose and requirements of Convention No. 156, including...
the proper interpretation of Article 8. The discussion of the General Survey at the Conference in 1993 revealed divided opinions regarding the pertinence of the Convention.

44. In the consultations a total of 26 member States\(^{(16)}\) responded to the request for information on possible obstacles and difficulties to ratification or on possible needs for revision of this Convention.

Ratification prospects

45. For Belgium and El Salvador, ratification seemed imminent, as the question was before their national Parliaments for approval. China, Romania, Poland and South Africa\(^{(17)}\) reported having determined that the Convention was suitable for ratification; Romania and Poland noted that tripartite consultations had been carried out for this purpose, while in Italy, Turkey and the United Kingdom such discussions were ongoing.

Obstacles or difficulties encountered

46. Among the 11 member States that reported obstacles to ratification, the most frequent obstacle was lack of conformity with national legislation. These member States included Panama, Jordan and Germany. The latter noted that "the possibility of a revision to enable Germany to ratify the Convention was considered unrealistic".\(^{(18)}\) For Estonia\(^{(19)}\) and Qatar the obstacle was the absence of legislation. In Switzerland a new law had raised recent obstacles to ratification.\(^{(20)}\)

47. Both Morocco and Austria had difficulties with Article 1, and Sri Lanka experienced difficulties with Articles 5, 6, 7 and 9. For Austria, Denmark and the United Kingdom Article 8 was an obstacle, and in Mexico the obstacle was that national legislation was more favourable.

Needs for revision

(a) Revision not envisaged

48. Australia, Brazil and Mexico all seemed satisfied with the content of the Convention. Australia qualified it as "sufficiently flexible, largely promotional in nature, and which could be promoted in stages".

(b) Revision proposals

49. A revision of this Convention was proposed by Egypt, Finland and New Zealand.\(^{(21)}\) Egypt considered that the Convention should be revised so as to be consistent with the customs and traditions of Arab States. Finland proposed a revision along three lines: (1) to ensure that the Convention corresponded to the current situation and circumstances in the labour market including, inter alia,
atypical employment contracts; (2) to include a provision allowing for the use of temporary affirmative
action for the attainment of real effective equality; (3) to revise the conditional clauses in the
Convention, which left room for different interpretations.

Remarks

50. Ratification seemed imminent in a few countries, and was seriously considered in several others. In
addition, a few member States expressly stated that they were satisfied with the Convention. Obstacles
to ratification were, however, reported from several member States, five of which indicated difficulties
with specific provisions of the Convention and a few calls for revision were noted. The continued
relevance of the Convention was not questioned by any member State.

51. The Working Party may consider that the consultations conducted and the previous examination
provide it with sufficient elements to confirm that the member States should be invited to contemplate
ratifying this Convention and that a recommendation to that effect be made to the LILS Committee. The
Working Party could also consider that efforts should be made to improve the rate of ratification of
Convention No. 156 and request the Office to undertake a short survey of Convention No. 156, in the
form suggested in the case of Convention No. 127, with respect to the issues raised in paragraphs 45-49
above so as to identify more precisely the obstacles to ratification and to examine the means to
overcome them.

Proposals

52. The Working Party is invited --

(a) to recommend that the Governing Body invite member States to contemplate ratifying Convention
No. 156;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997

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II.2. C.158 -- Termination of Employment Convention, 1982

Background

53. In the course of the previous examination of the Convention in March 1997, it was noted, inter
alia, that although it was a Convention to be promoted on a priority basis, it seemed to be encountering
persistent difficulties in gaining a significant number of ratifications. In the 1995 General Survey it was
noted that a certain number of governments had indicated legal or practical difficulties in the application
of the Convention which were preventing its ratification, in spite of the flexibility offered by the
Convention, but that no specific provisions in need of revision had been identified. During the
discussions of the General Survey at the Conference in 1995 opinions were divided as to the pertinence
of the Convention.

54. A total of 23 member States(23) responded in the course of the consultation to the request for
information on possible obstacles and difficulties to ratification or on possible needs for revision of this
Convention.

Ratification prospects

55. Six member States(24) stated that they are examining, or will be examining in the near future, the
possibility of ratifying this Convention. However, certain legal obstacles were lingering in Chile,
Suriname and Sri Lanka. In South Africa consultations with the social partners were to take place.

Obstacles or difficulties encountered

56. Of the 12 member States reporting obstacles to ratification, Argentina, China, Egypt, Estonia,
Panama and Qatar offered no further details, but gave only a general indication that national legislation
was an obstacle to ratification. Austria, Switzerland and Belgium specified that their national legislation
was based on the concept of freedom to terminate employment and was therefore not in conformity with
the Convention. Germany reported continuing and increased(25) legal obstacles with respect to the
application of Article 2(3), and did not consider realistic the possibility of obtaining a majority for
revising the Convention so as to enable Germany to ratify it. (26) The United Kingdom reported lack of
conformity between national legislation and Articles 2, 4, 6, 8 and 11 of the Convention, and Mexico
held that its national legislation offered better protection than the Convention. In Uruguay the
Government reported that the employers were opposed to ratification.

Needs for revision

Proposals for revision

57. Three member States proposed revision of this Convention. Australia considered that Article 2(6)
seemed to be interpreted inflexibly and that it therefore could be revised. Finland considered the
Convention to be in some respects outmoded and that Article 2 should be revised so as not to permit
termination of employment on grounds of gender or gender-related reasons (such as pregnancy or family
responsibilities). (27) New Zealand had no difficulty with the general principles of the Convention, but
reported that it did not comply with some detailed provisions related to Articles 13 and 14. (28)

Remarks
58. The replies received revealed several different opinions as to the pertinence of and future prospects for this Convention. As to the prospects for ratification, the possibility of further ratifications did not seem excluded in a few member States. Obstacles to ratification were reported from half of the member States responding, some of which seemed to be of persistent nature. A few member States considered the Convention to be in need of revision. Of these, one member State offered a detailed proposal to that effect. The continued relevance of the Convention was not questioned by any member State.

59. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to confirm that member States should be invited to contemplate ratifying this Convention, and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 158 with respect to the issues raised in paragraphs 55-57 above.

Proposals

60. The Working Party is invited --

(a) to recommend that the Governing Body invite member States to contemplate ratifying Convention No. 158;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.3. C.94 -- Labour Clauses (Public Contracts) Convention, 1949

Background

61. In the course of the previous examination of the Convention in November 1996 it was noted, inter alia, that this Convention was considered to be a valid foundation for national action as well as a ratification target, but that contracts awarded by a public authority fell within a context that had become more complex as a result of economic globalization.

62. In the consultations in 1997, 16 member States responded to the request for information on possible obstacles and difficulties affecting ratification of this Convention.

Ratification prospects
63. The Convention was being examined in El Salvador with a view to its submission to Parliament, and South Africa reported that changes in procurement policy might make later ratification possible. (32)

Obstacles or difficulties encountered

64. Five member States (33) reported obstacles to ratification due to lack of conformity between the Convention and national legislation, without giving further details.

Needs for revision

(a) Revision not envisaged

65. Austria, Belgium, Finland (34) and Mexico did not consider there was any need for revision of this Convention at present. Mexico noted that the Convention constituted a good guide for national action.

(b) Proposals for revision

66. No member State considered that there was a need for revision of this Convention. (35)

(c) Continued relevance of the Convention

67. Five member States seemed to question the continued relevance of this Convention. Australia, Estonia and to a certain extent Switzerland (36) considered the approach of the Convention to labour regulation to be out of date compared with modern conditions, and questioned whether there was a need for a standard addressing this issue. New Zealand stated that the Convention was "[not] ... appropriate to the present work environment where the same legislative framework applies to all employees and employers, with certain very limited exceptions", and that this Convention "should be considered for abrogation". For the United Kingdom the Convention had lost its relevance and was denounced in 1982.

Remarks

68. As regards future prospects, additional ratifications of the Convention could not be excluded, but very few member States reported any significant interest in ratifying this Convention. Four member States noted that they saw no need for revision of the Convention. As regards obstacles to ratification, no specific provisions of the Convention were identified as problematic. There were no calls for revision of the Convention from member States. However, with a varying degree of emphasis, the need for a standard addressing the subject-matter of the Convention was questioned by five member States.

69. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide on the maintenance of the status quo with respect to this
Convention and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 94 with respect to the issues raised in paragraphs 63-67 above.

Proposals

70. The Working Party is invited --

(a) to recommend to the Governing Body the maintenance of the status quo with respect to Convention No. 94;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.4. C.95 -- Protection of Wages Convention, 1949

Background

71. In the course of the previous examination in November 1996(37) it was noted, inter alia, that Convention No. 95 was among the instruments to be promoted on a priority basis, but that, as regards the payment of wages to migrant workers, it had been questioned whether certain aspects of the payment of wages to migrant workers were satisfactorily covered by the existing provisions of Convention No. 95. In addition to requesting additional information from member States, the Governing Body decided to invite the States parties to this Convention to contemplate ratifying the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), revising Article 11 of Convention No. 95.

72. In the course of the consultations held, 17 member States(38) responded to the request for information on possible obstacles and difficulties to ratification or on the possible needs for revision of this Convention.

Ratification prospects

73. Four member States addressed this issue. The Convention was being examined in El Salvador with a view to its submission to Parliament, and it was considered basically suited to the situation in China, but not the highest priority for ratification. In Finland, a more detailed examination was stated to be required to determine if ratification was possible in view of Finland's ratification of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).(39) Finally, in South Africa it was considered to be important to ratify this Convention, but the conformity of the Convention with the Bill...
concerning Basic Conditions of Employment still had to be examined.

**Obstacles or difficulties encountered**

74. Seven member States reported obstacles to ratification. In *Denmark* the problem was the absence of legislation on matters covered by the Convention. *Morocco* indicated particular difficulties with Article 4 of the Convention, and *Qatar* with Articles 2(2) and 10. *New Zealand* stated that the Convention contained a number of detailed provisions that were not appropriate in New Zealand, including the provision related to the use of company stores (Article 7), the place of payment (Article 13), and payment of allowances other than liquor and drugs (Article 4(1)). Both *Germany* and *Switzerland* reported that significant discrepancies existed between the Convention and national legislation. *(40)* *Jordan* noted discrepancies between national legislation and the Convention which were not further specified.

**Needs for revision**

(a) Revision not envisaged

75. *Austria* did not seek a revision of this Convention.

(b) Proposals for revision

*Methods of payment of wages (Article 3)*

76. *Australia, Belgium* and *Chile* *(41)* all considered the provisions regarding the methods for paying wages in Article 3 to be out of date and that they should be revised in order to permit payment by bank or electronic transfer.

(c) Continued relevance of the Convention

77. *Estonia* reported that the principles of the Convention were used in legislation, but that the Convention was out of date; the *United Kingdom* recalled that this Convention had lost its relevance for the United Kingdom and that it had therefore denounced it in 1983.

**Remarks**

78. The replies received seem to indicate different views as to the pertinence of the Convention and desired future action regarding it. Relatively few member States demonstrated any significant interest in ratifying the present Convention. Seven member States reported having discrepancies between national law and the Convention which rendered ratification impossible. Some articles of the Convention were identified as problematic. Among the five proposals for revision, three concerned a proposed revision of
the provisions regarding the methods for paying wages set out in Article 3. A few member States questioned the continued relevance of this Convention.

79. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to confirm that member States should be invited to contemplate ratifying both Convention No. 95 and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 95 with respect to the issues raised in paragraphs 73-77 above.

Proposals

80. The Working Party is invited --

(a) to recommend that the Governing Body invite member States to contemplate ratifying Convention No. 95 and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173);

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.5. C.153 -- Hours of Work and Rest Periods (Road Transport) Convention, 1979

Background

81. In the course of the previous examination of this Convention in March 1996, it was noted, inter alia, that Convention No. 153 was one of the fairly recent Conventions that had received few ratifications, and that Convention No. 153 revised Convention No. 67. The three States that were still party to it were invited to contemplate ratifying Convention No. 153 instead.

82. A total of 23 member States responded to the request for information on possible obstacles and difficulties affecting ratification or on the possible needs for revision of this Convention.

Ratification prospects

83. Six member States commented on the prospects for ratification of this Convention. Denmark
reported that deliberations were continuing as to whether it would be possible to ratify the Convention, but recalled in this context the negotiations within the European Union concerning the preparation of directives in the field of working time, including road transport. In Egypt certain differences existed between national legislation and the Convention, and ratification was "delayed" until the promulgation of new labour legislation. In El Salvador the question of submitting the present Convention to Parliament for ratification was being examined. Estonia stated that ratification of the Convention was not a problem, but it "was not a priority". In South Africa ratification would only be possible after the adoption of the Basic Conditions of Employment Bill. Finally, in Turkey national legislation was largely in conformity with the Convention and it was considered possible to ratify the Convention, although no decision to that effect had yet been taken.

**Obstacles or difficulties encountered**

(a) **General obstacles**

84. Of the 13 member States that reported obstacles to ratification, seven (Argentina, Brazil, Chile, China, Jordan, Panama and Suriname) referred to obstacles to ratification deriving from discrepancies between national legislation and the Convention.

(b) **Compatibility with EU legislation**

85. The compatibility between the Convention and EU legislation in this context was discussed by three member States. Austria stated that ratification was impossible as the Convention also applied to self-employed drivers who, under Austrian law, did not enjoy safety and health protection, that the Convention went "further than" EEC Directive 3820/85, that Austrian legislation was "brought into line" with EU law in 1992, 1994 and 1997, and that no further amendments were planned for the foreseeable future. Belgium noted that this subject area was covered by EU legislation and that it was awaiting an acceptable and valid solution to the pending question of the ratification of international labour Conventions on subject areas within the competence of the EU. Finland considered that the Convention could not be ratified as it was inconsistent with Finnish working hours legislation and Community legislation.

(c) **References to specific Articles in the Convention**

86. Difficulties with several Articles in the Convention were reported by four member States. Qatar could not ratify the Convention as national legislation differed from Article 6(1) concerning hours of work -- providing for ten hours' maximum instead of nine hours -- and Article 8 concerning daily rest, which in Qatar were dependent on the nature of transport. In Germany the obstacles to ratification included the lack of exceptions for special types of transport such as postal transport, and the provisions in Articles 7 and 8. In Morocco there was no national provision corresponding to Articles 6, 7, 8(1), and national law was in conflict with Article 4(2). In Sri Lanka national law and practice did not conform to
Articles 1(2), 2(2), 5(1), 6(1), 7(1), 10 or 11(a) of the Convention, and ratification was therefore not possible.

Needs for revision

87. Among the three member States that called for a revision of this Convention, Estonia noted that it should be revised because "far more questions should be regulated on the basis of the Convention". On the other hand, New Zealand considered the Convention too prescriptive and detailed, and supported revision with a view to making it less detailed. The United Kingdom took the view that this Convention had been largely overtaken by events and seemed to be "a prime candidate for revision" to bring it into line with the European Agreement on the Work Crews of Vehicles Engaged in International Road Transport (AETR).

Remarks

88. The replies received gave no indication that any new ratifications of the Convention were imminent, although some member States were examining the issue. Several member States reported obstacles to ratification and most of these obstacles seemed attributable to discrepancies between national legislation and the Convention. In particular, three member States questioned the compatibility of the Convention with EU legislation, and four member States identified problems with a series of specific provisions of the Convention. Three member States suggested a revision of the Convention, inter alia "to bring it into line with" the European Agreement concerning the Work Crews of Vehicles Engaged in International Road Transport (AETR). No member State questioned the relevance of the Convention.

89. The Working Party may consider the consultations conducted and the previous examination provide it with sufficient elements to determine that the ratification prospects for the present Convention are almost inexistent and to decide to maintain the status quo with respect to this Convention. The Working Party could also consider that efforts should be made to improve the rate of ratification of Convention No. 153 and request the Office to undertake a short survey in the form suggested in the case of Convention No. 127 with respect to the issues raised in paragraphs 83-87 above, to identify possible obstacles to ratification and to examine the means to overcome them.

Proposals

90. The Working Party is invited --

(a) to recommend to the Governing Body the maintenance of the status quo with respect to Convention No. 153;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.
II.6. C.132 -- Holidays with Pay Convention (Revised), 1970

Background

91. In the course of the previous examination of this Convention in March 1997, it was noted, inter alia, that this Convention revised the Holidays with Pay Convention, 1936 (No. 52), that since its adoption Convention No. 132 had remained poorly ratified, that the Committee of Experts in 1984 was of the opinion that some of the obstacles reported might be overcome, and that it seemed "likely" that the Convention would receive a "number of ratifications." It was also noted that Convention No. 132 had been classified in the category of Conventions to be promoted on a priority basis both in 1979 and in 1987. Eleven of the 55 member States parties to Convention No. 52 have so far decided to ratify the revising Convention No. 132.

92. A total of 24 member States responded, in the course of the consultations, to the request for information on possible obstacles and difficulties to ratification or on the possible needs for revision of this Convention.

Ratification prospects

93. Belgium reported that the Convention was not yet ratified, but that it formed part of a series of Conventions concerning which the ratification procedures could be initiated in the near future. In Denmark work was under way on a full revision of Danish holiday legislation, and in this connection consideration would also be given to whether it would be possible for Denmark to ratify this Convention. In El Salvador the question of submitting the present Convention to Parliament for ratification was being examined. Romania reported that, after tripartite consultations, this Convention had been designated as suitable for ratification. The United Kingdom stated that the implementation of the EU Working Time Directive might bring national legislation into conformity with the Convention, but that this issue would have to be examined at a later stage.

Obstacles or difficulties encountered

94. Of a total of 14 member States reporting obstacles or difficulties, the majority -- nine member States -- did not specify the nature of these obstacles. Of the others, Australia reported that some Australian jurisdictions did not have legislation concerning paid annual leave, and that Australia could therefore not demonstrate full compliance. Austria stated that national legislation had largely been brought into line with the Convention, but that problems persisted with respect to Articles 6(1), 7 and 9. For Mexico the main obstacle was Article 3(3), as national entitlements were lower. Mexico did not, however, seek a revision of the Convention, as it was a good guide for member States. For Morocco the right to a division of the annual holiday into parts provided for in Article 8 did not comply with national
rules and was an obstacle to ratification. For Sri Lanka Articles 2(1), 3(1), 3(3), 5(2), 7 and 8(2) were problematic and made ratification impossible.

Needs for revision

95. Five member States proposed a revision of this Convention. Egypt considered that the Convention should be partially revised so as to allow the award of paid educational leave according to working conditions, and that Article 8(2) should be revised to reduce the minimum requirement of two weeks of uninterrupted holiday. For Estonia there was basically no problem as regards ratifying the Convention, but it might require partial revision in the light of the European Social Charter. Finland considered that the Convention continued to serve its purpose, but that certain provisions -- for example the provisions concerning gainful activity conflicting with the purposes of the holiday (Article 13) -- were obsolete. It also considered that the Convention should consider atypical employment contracts, that the principles laid down in the EU agreement on part-time work should be taken into account and that the Convention should be made more flexible. New Zealand considered the Convention too prescriptive and too detailed, and expressed support for a revision with a view to making it less detailed. Qatar reported problems with Articles 3, 9 and 10, and proposed a revision of Article 9 with a view to its simplification.

Remarks

96. As regards the prospects for ratification, the statements made indicate that the Convention might be ratified by a few more member States. However, the majority of those commenting on this Convention reported obstacles to ratification. Without proposing a revision, five member States identified several Articles of the Convention that posed difficulties for ratification. Another five member States either proposed a revision of certain Articles of the Convention or suggested a more general adaptation of the Convention to Community legislation or current trends in the labour market.

97. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide to maintain the status quo with respect to this Convention and that a recommendation to that effect be made to the LILS Committee. The Working Party might also consider that efforts should be made to improve the pace of ratification of Convention No. 132 and request the Office to undertake a short survey of Convention No. 132, in the form suggested in the case of Convention No. 127, with respect to the issues raised in paragraphs 93-95 above so as to identify possible obstacles to ratification and to examine the means to overcome them.

Proposals

98. The Working Party is invited --

(a) to recommend to the Governing Body the maintenance of the status quo with respect to Convention No. 132;
(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.7. C.140 -- Paid Educational Leave Convention, 1974

Background

99. In the course of the previous examination of this Convention in March 1997, it was noted, inter alia, that the Convention had received a relatively low number of ratifications, that economic or financial difficulties were specially important in the application of this Convention, and that it was a promotional and flexible Convention. Reference was also made to the Committee of Experts, who had addressed a number of problems reported in the General Survey of 1991 and who noted in 1995 a revival of interest in this Convention manifested, inter alia, by additional ratifications. At the Conference in 1995, the Employers' members remarked, however, that the global number of ratifications of Convention No. 140 was only 28 and that they considered that there were still a considerable number of problems concerning the practical application of this Convention.

100. In the course of the consultations, a total of 23 member States responded to the request for information on possible obstacles and difficulties to ratification or on the possible needs for the revision of this Convention.

Ratification prospects

101. Of the five member States responding on this question, ratification seemed most imminent in Chile as the Convention had been submitted to Parliament for ratification. Denmark reported that when this Convention was adopted in 1974 it had not been possible for Denmark to ratify it, due, among other things, to the question of the right to leave in connection with general education. Since then Danish legislation had changed and the possibility of ratification was due to be examined with the social partners in the Permanent ILO Committee. In Italy the Government noted that, subject to the views of the social partners, there were no obstacles to ratification. Turkey reported that national legislation basically was in conformity with the Convention and that necessary amendments in national legislation could be envisaged enabling ratification "according to rapid improvements in the socio-economic structure". Finally, in El Salvador the question of submitting the present Convention to Parliament for ratification was being examined.

Obstacles or difficulties encountered

102. Among the 13 member States reporting obstacles to ratification, eight member States made either an unspecific reference to differences between national legislation and the Convention which
made ratification impossible, or reported a lack of corresponding legislation. Australia considered this Convention to be an appropriate target for ratification, but the provisions relating to the inclusion of "general, social and civic education" in the scope of the Convention created difficulties in demonstrating compliance. Austria noted that the Government did not seek the revision of this Convention, although national legislation was not in conformity. Estonia was not ready to ratify the Convention, as the trade unions considered that trade union leave was not an independent type of educational leave, as provided in Convention No. 140. In Uruguay the Government reported that the employers were opposed to ratification of this Convention. Finally, while the Government of South Africa did not comment on this Convention, a South African employers' organization reported that while training in general was needed, the ratification of this Convention could not be supported at the present stage of South Africa's development.

Needs for revision

(a) Revision not envisaged

103. Suriname reported that, while the Convention had not been ratified, some of the provisions in the Convention were already in the Labour Code.

(b) Proposals for revision

104. Three member States proposed a revision of this Convention. Egypt considered that it should be partially revised so as to allow the award of paid educational leave "according to working conditions". According to Finland it was important to promote and encourage the ratification of this Convention, but an important consideration in assessing the need to revise Convention No. 140 or to prepare an entirely new Convention was the global employment situation, which had changed considerably during the past two decades. Finland further considered that it might also be worth looking into the possibility of formulating a Convention that takes into account the different circumstances of different workers. A revision of Convention No. 140 was not considered imperative, however, as it was sufficiently flexible. Belgium considered that this Convention could possibly be revised in order to take into account new working time arrangements, in particular part-time work, and to emphasize, within the framework of lifelong training, increased possibilities for the unemployed to regain employment.

(c) Continued relevance of the Convention

105. Both New Zealand and Switzerland considered that this kind of education and training was an issue for employers and employees to decide for themselves, and that it was not an appropriate subject for the ILO to regulate. New Zealand further suggested that this Convention should be abrogated.

Remarks

106. The views reported regarding this Convention varied. There seemed to be some prospects for
further ratifications, and the obstacles to ratification reported did not seem to reveal any particular problems with the Convention. A few calls for revision could be noted, but at least two of these proposals seemed rather tentative in view of the flexibility offered by the Convention. Two member States took a radically different view, however, in that they considered that such education and training were not appropriate subjects for the ILO to regulate.

107. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide to confirm that member States should be invited to contemplate ratifying this Convention, and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 140, with respect to the issues raised in paragraphs 101-105 above.

Proposals

108. The Working Party is invited --

(a) to recommend that the Governing Body invite member States to contemplate ratifying Convention No. 140;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.8. C.13 -- White Lead (Painting) Convention, 1921

Background

109. In the course of the previous examination of this Convention in March 1997, it was noted, inter alia, that Convention No. 13 had not been revised since its adoption in 1921, that it had been classified as a Convention to be promoted on a priority basis both in 1979 and in 1987, but that in 1988 the Committee of Experts considered that there were "increasing difficulties encountered in the application of Article 3, paragraph 1, of the Convention". It was envisaged in March 1997 that at least a partial revision of the Convention, possibly in the form of a Protocol, could be considered.

110. In total, 19 member States replied in the course of the consultations to the request for information on the possible obstacles and difficulties affecting ratification or on the possible needs for revision of this Convention.

Ratification prospects
111. Portugal reported that ratification was foreseeable; existing legislation in Switzerland seemed to be in conformity with the Convention; and in El Salvador the question of submitting the present Convention to Parliament for ratification was being examined.

Obstacles or difficulties encountered

112. Australia considered this Convention unsuitable for ratification as it excluded individuals from certain categories of work on the grounds of their age and sex rather than any proven health risk. Brazil reported an absence of legislation on the subject-matter, and the Convention was not among those considered basically suited to the situation in China. In both South Africa and Turkey some amendments to national legislation were required before ratification could be considered.

Needs for revision

(a) Revision not envisaged

113. Austria and Finland did not see any need to revise this Convention, and Qatar considered it "important".

(b) Proposals for revision

114. Belgium proposed a revision of Articles 1, 5 and 7 without further details. Chile also favoured a revision but did not offer any details. Denmark objected to the special provisions in Article 3, which were based on gender, although the need for protection for men and women are the same. A revision should in Denmark's view be aimed at ensuring the same level of protection for men and women.

(c) Continued relevance of the Convention

115. Six member States questioned in several ways the relevance of this Convention. Australia questioned whether there was a need for a specific standard on this issue, and if so, whether it should address the lead industry per se. Denmark considered that there should be a general discussion of the need for Conventions concerning specific substances and that, in its view, efforts could, as a starting-point, be concentrated on the preparation of a general Convention on the subject of hazardous substances; if appropriate, Conventions addressing specific substances could be considered at a later stage. Egypt considered that this Convention was no longer "appropriate to the circumstances of our modern time" and that a full revision was due. Germany was of the view that the the prohibition concerning women was discriminatory and that the Convention was technically obsolete. Germany further proposed that Convention No. 170 should include a list of substances that could be updated regularly in the light of new findings. New Zealand reported that white lead was no longer in use in paint in New Zealand, that ratification was not envisaged as the Convention was obsolete, and that the
Convention should be abrogated. It should "at the very least be totally revised" as regards the special provisions for women which were not "appropriate in the present work environment" and to include regulation of the removal of leaded paint during renovations. In the United Kingdom the present provisions were more stringent than the Convention and ratification of this Convention would therefore "have no practical benefit" in the United Kingdom. Uruguay was in favour of a full revision, as white lead was no longer in use.

Remarks

116. Based on the responses received, there seem to be only very limited prospects for new ratifications of this Convention, and only two member States saw no need for revision. On the other hand nine member States had serious objections to the content of the Convention and, of these, six questioned the continued relevance of the Convention.

117. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to decide that this Convention should be revised and that a recommendation to that effect be made to the LILS Committee. However, as mentioned previously in the case of Convention No. 127, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 13 with respect to the issues raised in paragraphs 111-115 above.

Proposals

118. The Working Party is invited --

(a) to recommend to the Governing Body the revision of Convention No. 13 and that it include this item in the portfolio of proposals for the agenda of the Conference;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.9. C.119 -- Guarding of Machinery Convention, 1963

Background

119. In the course of the previous examination of the Convention in March 1997, it was noted, inter alia, that there seemed to be technical difficulties in the implementation of the Convention, that existing national legislation tended to be more general in scope than the provisions of the Convention, and that one of the problems in the full application of Convention No. 119 in ratifying countries had been the
implementation of the rather complex provisions preventing dangerous machinery from reaching users. Although the Convention seemed to retain its value as a guide for national action in this field, it had been suggested to adopt a Protocol to the Convention to prescribe rules in a related field -- safety in the international transfer of machinery and technology.

120. In the course of the 1997 consultations responses were received from 19 member States on possible obstacles and difficulties affecting ratification or on the possible needs for revision of this Convention.

Ratification prospects

121. Seven member States seemed to be considering ratification or did not see any obstacles thereto. Australia considered the Convention an "appropriate target for ratification", Chile was seriously considering ratification, China considered the Convention basically suited to its conditions, Estonia reported "no difficulty with ratification", Romania had established that the Convention was suitable for ratification after tripartite consultations, South Africa stated that it should be considered for ratification, and in El Salvador the question was under consideration.

Obstacles or difficulties encountered

122. Several member States reported obstacles to ratification. Austria was not considering ratifying this Convention, and noted that even if it applied its fundamental principles, not all the individual obligations -- such as for example those in Article 11(1) -- were met in practice. Belgium reported that the obstacle was that national legislation did not prescribe consultations between employees and employers concerning protective equipment. Egypt considered its national legislation to be in conformity with the Convention, but reported difficulties in its practical application. In Germany present legislation had largely been brought into conformity, but the question of second-hand machinery bought from European Economic Area (EEA) countries was not in conformity and the scope of application of the Convention was wider than national legislation. In Mexico national legislation did not conform to the second part of the Convention (Articles 2-5). New Zealand considered that the Convention was an incomplete guide to hazard identification and control, and reported that ratification was impossible as national legislation did not require consultation. Sri Lanka stated that national laws and practice fell short of some provisions, especially those under Article 2, which therefore was an obstacle to ratification. Suriname noted that the Convention had not been ratified as the Suriname industrial sector was still at an early stage of development. In the United Kingdom new legislation had to be examined.

Needs for revision

(a) Revision not envisaged

123. Austria did not seek a revision of this Convention, and Finland, Mexico and Qatar considered that there was "no need" to revise it. Mexico and Qatar considered the Convention a good guide for action.
(b) Proposals for revision

124. Belgium proposed a revision in the light of the new concepts progressively being applied in the field of occupational risks. Denmark considered that there was a need for revision in the light of technical developments. Germany and Finland both proposed that, in the event of a revision, a comprehensive approach was needed to bring the Convention into line with EU guidelines in the matter. 

Remarks

125. There seem to be definite possibilities that this Convention will receive additional ratifications, as several member States reported seriously considering this question. However, several member States also reported obstacles to ratification that related to different types of discrepancies between the Convention and national legislation. Although four member States specifically noted that they did not see any pressing need to revise the Convention, the compatibility between the Convention and EU legislation emerged as an issue of concern in the opinion of some member States. The adaptation of the Convention to new concepts in the field of occupational safety and health was proposed by one member State.

126. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to confirm that member States should be invited to contemplate ratifying this Convention and that a recommendation to that effect be made to the LILS Committee. The Working Party might also consider that efforts should be made to improve the rate of ratification of Convention No. 119, and request the Office to undertake a short survey of Convention No. 119, in the form suggested in the case of Convention No. 127, with respect to the issues raised in paragraphs 121-124 above, so as to identify possible obstacles to ratification and to examine the means to overcome them.

Proposals

127. The Working Party is invited --

(a) to recommend that the Governing Body invite member States to contemplate ratifying Convention No. 119;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

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II.10. C.152 -- Occupational Safety and Health (Dock Work) Convention, 1979

Background

128. In the course of the previous examination of this Convention in March 1991, it was noted, inter alia, that since its adoption there had been a fairly steady trend towards the ratification of Convention No. 152, although no new ratification had been registered in the past five years, and that Convention No. 152 contained updated provisions revising two earlier Conventions (No. 28 and No. 32).

129. In the course of the 1997 consultations 23 member States responded to the request for information on the possible obstacles and difficulties affecting ratification or on the possible needs for revision of this Convention.

Ratification prospects

130. Eight member States seemed to be considering ratification of this Convention. In Italy the Parliament had approved ratification, but the accompanying regulations had not yet been adopted. Australia considered it to be an appropriate target for ratification, and Belgium and Turkey stated that it could be ratified subject to certain amendments. In Romania the Convention had been designated as suitable for ratification after tripartite consultations. In the United Kingdom recent developments in national legislation seemed to have increased compliance with the Convention and the possibility of ratification was being considered. This Convention was basically suited to the situation of China, but was not the highest priority for ratification. In El Salvador ratification of the Convention was under consideration.

Obstacles or difficulties encountered

131. Nine member states (Argentina, Chile, Estonia, Jordan, Morocco, Panama, Qatar, Sri Lanka and Suriname) noted discrepancies between their national legislation and the Convention without giving further details. In New Zealand Article 37 was the main obstacle to ratification. In the case of Austria, the main obstacle was that Article 3 covers self-employed dockworkers. The Austrian system of occupational safety and health does not cover self-employed persons. This problem could be solved only with a new Convention covering only persons who are employed or who are undergoing training, or allowing a Member to ratify the Convention only with regard to such persons. However, Article 37 is also an obstacle requiring the establishment of health and safety committees in every port, when Austrian law requires this only in ports with more than 100 employees. Switzerland stated its intention to ratify the Convention on condition that the major maritime and Rhône nations also would ratify it. At the time of writing, however, only Germany and France had done so, but not Belgium, Luxembourg or the Netherlands. Political conditions therefore prevented ratification.

Needs for revision
132. The Government of Austria did not seek a revision of this Convention, and Finland considered there was no need to revise it.

Remarks

133. The ratification prospects for this Convention seemed rather favourable in that one ratification seemed imminent, two or three member States seemed to be seriously considering ratification, and another five were in favour of ratification. Two member States did not seek a revision or noted that there was no need to revise it. Several member States reported obstacles to ratification in the form of discrepancies between the Convention and national legislation. Difficulties with Article 37 were identified by two member States. Otherwise few, if any, details were supplied. There were no calls for a revision, however, and no member State questioned the continued relevance of the Convention.

134. The Working Party may consider that the consultations conducted and the previous examination provide it with sufficient elements to confirm that member States, and especially the States parties to Conventions Nos. 28 and 32, should be invited to contemplate ratifying Convention No. 152 and that a recommendation to that effect should be made to the LILS Committee. However, if the Working Party considers that the information available remains too limited, it could request the Office to undertake a short survey of Convention No. 152, in the form suggested in connection with the examination of Convention No. 127, with respect to the issues raised in paragraphs 130-132 above.

Proposals

135. The Working Party is invited --

(a) to recommend that the Governing Body invite member States, and especially the States parties to Conventions Nos. 28 and 32, to contemplate ratifying Convention No. 152;

(b) alternatively, to request the Office to undertake a short survey of the issues raised during the 1997 consultations, and to report to the Working Party in November 1998.

* * *

136. The Working Party is invited to examine the proposals presented above and to submit its recommendations on the subject to the Committee on Legal Issues and International Labour Standards.


Points for decision:
1. By the end of August 1997 only seven replies had been received; the majority of the replies were received at the end of September. Although the completion of this document was delayed in order to take as many replies as possible into account, those received after 19 October 1997 could not be considered. In all, 34 responses have been taken into account.

2. The Office transmitted a reminder of the recommendation to consult with the social partners to governments whose submissions did not reflect that such consultations had been conducted.

3. In the following analysis, the views of the social partners have been indicated separately only when they explicitly differed from those of their governments.

4. GB.270/LILS/WP/PRS/1/1.

5. GB.268/LILS/WP/PRS/1, section VIII.5, and GB.268/8/2, Appendix II, paras. 85-87.

6. GB.270/2.

7. Argentina, Australia, Belgium, Chile, Denmark, El Salvador, Finland, Germany, Jordan, New Zealand, Portugal, Qatar, Sri Lanka, Switzerland and the United Kingdom.

8. GB.268/LILS/WP/PRS/1, section VIII.6 and GB.268/8/2, Appendix II, paras. 88-90.

9. A South African employers' organization considered, however, that Convention No. 170 or the Occupational Safety and Health Convention, 1981 (No. 155), was a more suitable ratification target, and that Convention No. 136 should be abrogated.

10. An employers' organization disagreed, however, and considered the Convention to be obsolete and
11. Denmark, Finland, Jordan, Mexico, New Zealand, Portugal, Qatar, South Africa and the United Kingdom. A Swiss workers' organization disagreed with the Government and proposed a general revision of this Convention.

12. Austria, Egypt, El Salvador, Mexico and Switzerland. In addition, two employers' organizations in Finland disagreed with their Government and did not consider that this Convention was in need of revision.

13. GB.268/LILS/WP/PRS/1, section VIII.9, and GB.268/8/2, Appendix II, paras. 96-98.

14. Australia, Belgium, Chile, China, Denmark, Egypt, El Salvador, Finland, Jordan, New Zealand, Portugal and Switzerland. An employers' organization in New Zealand considered, however, that the Convention was not "significantly relevant to modern shipping conditions" and should therefore be abrogated. Similarly, an employers' organization in Chile and a workers' organization in Switzerland both considered the Convention to be obsolete.


16. Australia, Austria, Belgium, Brazil, China, Denmark, Egypt, El Salvador, Estonia, Finland, Germany, Italy, Jordan, Mexico, Morocco, New Zealand, Panama, Poland, Qatar, Romania, South Africa, Sri Lanka, Suriname, Switzerland, the United Kingdom and Turkey.

17. An employers' organization in South Africa cautioned against the Government's interest in ratifying the Convention "until the economy allows for it".

18. An employers' organization in Germany proposed revision of the Convention in order to make it "more practicable and realistic".

19. A workers' organization in Estonia wished to see the Convention ratified.

20. An employers' organization in Switzerland wished to see the Convention ratified.

21. A workers' organization in New Zealand wished to see the Convention ratified.

22. GB.268/LILS/WP/PRS/1, section III.4, and GB.268/8/2, Appendix II, paras. 56-58.

23. Argentina, Austria, Australia, Belgium, Chile, China, Denmark, Egypt, El Salvador, Estonia, Finland, Germany, Jordan, Mexico, New Zealand, Panama, Qatar, South Africa, Sri Lanka, Suriname, Switzerland, United Kingdom and Uruguay.
24. Chile, Denmark, El Salvador, South Africa, Suriname and Sri Lanka. An employers' organization in Chile was opposed to ratification, however.

25. As compared to the situation in 1994 when Germany reported to the Committee of Experts in accordance with article 19, para. 5(e).

26. An employers' organization in Germany considered this Convention to be a "striking example of a Convention with lack of realism and flexibility".

27. A workers' organization in Finland made an extensive revision proposal including a proposal "to upgrade" Article 2(5) so as to prevent the use of fixed-term employment contracts for the purposes of evading employment security rules; to reword the economic and operational justifications for termination listed under Article 4 for greater accuracy; to expand the list of examples under Article 5 to include, among other factors, age, sexual orientation and the active promotion of one's own or others' interest; to place the burden of proving the existence of a valid reason for termination (Article 9) on the employer; to reword Article 10 for greater accuracy; to ensure that the Convention adequately safeguarded workers' and their representatives' right to information, their right to be heard, and their right to negotiate prior to decision-making; and, finally, to move point 13 from the Recommendation and include it in the Convention.

28. In New Zealand, a workers' organization was opposed to revision, while an employers' organization proposed a revision to "improve the flexibility" of the Convention.


30. Australia, Austria, Belgium, Chile, China, El Salvador, Estonia, Finland, Germany, Jordan, Mexico, New Zealand, South Africa, Sri Lanka, Switzerland and the United Kingdom. However, an employers' organization in Germany considered the Convention to be "mistaken in its very objective", that no revision was envisageable, and that it should be shelved and later abrogated.

31. Following discussions in the Working Party, this decision did not include a request for information as to the possible needs for revision of this Convention.

32. However, an employers' organization in South Africa proposed a revision to bring the Convention more into line with the WTO/GATT Agreement on Government Procurement.

33. Chile, China, Germany, Mexico and Sri Lanka.

34. Two workers' organizations in Finland proposed, however, extending the scope of application of the Convention to include not only public contracts entered into by the State, but also contracts involving other public entities.
35. cf. footnotes 28 and 30.

36. A workers' organization in Switzerland was of the opinion, however, that ratification should be possible.

37. GB.267/LILS/WP/PRS/2, section III.4, and GB.267/9/2, Appendix III, paras. 21-22.

38. Australia, Austria, Belgium, Chile, China, Denmark, El Salvador, Estonia, Finland, Germany, Jordan, Morocco, New Zealand, Qatar, South Africa, Switzerland and the United Kingdom.

39. In Finland, three workers' organizations considered ratification was possible and desirable, while an employers' organization maintained that Convention No. 173 de facto had superseded Convention No. 95 and that there was no need to ratify separate Conventions which overlap to a great extent.

40. A Swiss workers' organization disagreed with the Government as to the existing obstacles and considered that ratification was possible.

41. In Chile a workers' organization stated that they would agree to ratification of this Convention once the proposed revision had been undertaken, while an employers' organization considered the Convention to be obsolete and generally in need of revision.

42. GB.265/LILS/WP/PRS/1, section V.3, and GB.268/LILS/5, paras. 61-63.

43. At the time of the previous examination it had received seven ratifications, and as at 30 September 1997 no new ratifications had been recorded since then.

44. Argentina, Australia, Austria, Belgium, Brazil, Chile, China, Denmark, Egypt, El Salvador, Estonia, Finland, Germany, Jordan, Morocco, New Zealand, Panama, Qatar, South Africa, Sri Lanka, Suriname, Turkey and the United Kingdom.

45. An employers' organization in South Africa considered, however, that ratification could not be supported at the present stage in view of the ongoing debate on working conditions and transport policy in South Africa.

46. A Turkish employers' organization disagreed and provided a detailed explanation of their reasons to oppose ratification of the Convention.

47. However, a workers' organization in Chile was in favour of ratification.

48. Two Finnish workers' organizations were of the opinion, however, that there were only "minor" inconsistencies between the Convention and Community legislation and that generalized ratification of
the Convention throughout Europe was desirable.

49. GB.268/LILS/WP/PRS/1, section VII.7, and GB.268/8/2, Appendix II, para. 76.

50. Argentina, Australia, Austria, Belgium, Brazil, Chile, China, Denmark, Egypt, El Salvador, Estonia, Finland, Jordan, Morocco, Mexico, New Zealand, Panama, Qatar, Romania, South Africa, Sri Lanka, Suriname, Turkey and the United Kingdom.

51. Argentina, Brazil, Chile, China, Jordan, Panama, South Africa, Suriname and Turkey.

52. GB.268/LILS/WP/PRS/1, section VII.8, and GB.268/8/2, Appendix II, paras. 77-80.

53. Argentina, Australia, Austria, Belgium, Chile, China, Denmark, Egypt, El Salvador, Estonia, Finland, Italy, Jordan, Morocco, New Zealand, Panama, Qatar, South Africa (comments only from the social partners), Sri Lanka, Suriname, Switzerland, Turkey and Uruguay.

54. Argentina, China, Jordan, Morocco, Qatar, Panama, Sri Lanka and Uruguay.

55. While an employers' organization in New Zealand agreed with this position, a workers' organization considered this to be an important Convention which New Zealand should ratify.

56. It may, however, be recalled that during the examination of this Convention in the Working Party, the Employer members "raised the possibility of the Office carrying out a special study on the status of Convention No. 140 so that the Working Party could take a decision on the existing problems". GB.268/LILS/5(Rev.1), paras. 77-78, Appendix II to GB 268/2/2. See also GB.270/LILS/WP/PRS/1/1, para. 11.

57. GB.268/LILS/WP/PRS/1, section VIII.2, and GB.268/8/2, Appendix II, para. 35.

58. Australia, Austria, Belgium, Brazil, Chile, China, Denmark, Egypt, El Salvador, Finland, Germany, Jordan, New Zealand, Portugal, Qatar, South Africa, Switzerland, Turkey and the United Kingdom.

59. An employers' organization in South Africa considered, however, that there was no reason to single out lead for special regulation and that this Convention was outdated and should be "deleted", particularly in view of the fact that the Occupational Safety and Health Convention, 1981 (No. 155), and the Chemicals Convention, 1990 (No. 170), also were available.

60. GB.268/LILS/WP/PRS/1, section VIII.4, and GB.268/8/2, Appendix II, para. 84.

61. Australia, Austria, Belgium, Chile, China, Denmark, Egypt, El Salvador, Estonia, Finland, Germany, Mexico, New Zealand, Romania, Qatar, South Africa, Sri Lanka, Suriname and the United Kingdom.

63. GB.265/LILS/JP/PRS/1, section V.9, and GB.265/LILS/JP, para. 71.

64. Argentina, Australia, Austria, Belgium, Chile, China, El Salvador, Estonia, Finland, Jordan, Italy, Morocco, New Zealand, Panama, Romania, Qatar, South Africa, Sri Lanka, Switzerland, Suriname, Turkey, the United Kingdom and Uruguay.

65. An employers' organization in Chile agreed with the Government, but a workers' organization was in favour of ratification. In Uruguay the Government reported that the employers were opposed to ratification of the Convention.

66. A Swiss workers' organization considered the Convention a central Convention and wished to see it ratified.


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