SECOND ITEM ON THE AGENDA

Examination of the needs for revision of Conventions (fourth stage)

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I. Introduction

1. The present paper contains an examination of the needs for revision of 21 Conventions and is submitted for consideration by the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards (LILS) at its fifth meeting. The criteria adopted for this examination and the methodology to be applied were approved by the LILS and the Governing Body at its 264th and 265th Sessions.\(^1\) The results of the three previous phases of the examination comprising a case-by-case examination of 101 Conventions, resulting in decisions taken by the Governing Body for 99 of these Conventions, are recapitulated in a notice of information submitted to the Committee on the Application of Standards during the 85th Session of the International Labour Conference 1997.\(^2\)

2. The analysis of these 21 Conventions continues the analysis of the needs for revision of Conventions carried out by the Working Party in March and November 1996 and March 1997. Nineteen of the Conventions here examined are considered for the first time, while the examination of two Conventions was initiated, but not concluded, at the meeting of the Working Party in March 1997.

3. The Conventions under review pertain to six different subject areas: human rights, labour administration, social security, employment of children and young persons, indigenous and tribal peoples, and two special categories, dock workers and nursing personnel.

4. With the examination of these Conventions the Working Party will complete its examination of all Conventions within its mandate with the exception of Conventions on seafarers and fishermen. The Working Party may wish to consider a special procedure with respect to these Conventions to enable the Working Party to benefit from the views and expertise from constituents in these areas.

5. The present examination makes a series of proposals which can be arranged as follows.

Proposals for revision

6. With respect to four Conventions elements have been identified which might indicate that there is a need for revision. With respect to Convention No. 121 it is proposed to solicit additional information from the member States including on this issue. In the case of Conventions Nos. 77, 78 and 124 it is proposed to consider the substance of the Conventions as having a continued relevance, and to solicit additional information regarding the possibility of revising these Conventions with a view to
consolidating these three Conventions into one.

**Promotion of revised Conventions**

7. Twelve of the Conventions examined have already been revised. It is proposed that the States Parties to the initial Conventions be invited to ratify the corresponding recent Conventions.

**Promotion of up-to-date Conventions**

8. Four of the examined Conventions are proposed to be considered up to date so that as a result the ratification of these Conventions should be encouraged. Not all indications, however, support the conclusion that these Conventions are up to date. It is therefore proposed to ask member States to inform the Office whether there are any obstacles or difficulties that might impede or delay the ratification of these Conventions. In the case of Convention No. 102, it is proposed to seek specific information regarding the reasons for the limited recourse to the flexibility clauses included in this Convention.

**Shelving and abrogation**

9. None of the examined Conventions are proposed for immediate shelving or abrogation. With respect to six Conventions, it is proposed, however, to decide now that they are outmoded, but that the question of shelving be brought up at a later stage when the ratification levels of these Conventions has substantially decreased. With respect to another six Conventions, it will be determined at a later stage whether or not shelving should be considered.

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**II. Human rights**

**Freedom of association**

*C. 141 -- Rural Workers' Organisations Convention, 1975*

(1) **Ratifications:**

(a) Number of current ratifications: 35.


(c) Ratification prospects: The Convention has received additional ratifications at a slow but steady rate. Since 1987 nine additional ratifications have been recorded and it is likely to receive more ratifications.
(2) **Denunciations:** None.

(3) **Supervisory procedures:** Comments pending for eight countries including observations made by workers' organizations in India and the Philippines. The Conference Committee on the Application of Standards discussed the case of India in 1992.

(4) **Need for revision:** This Convention has not been revised. The Committee of Experts noted in the General Survey of 1983 that a large number of countries reported difficulties that could "delay or prevent" ratification of the Convention, but that some of these countries should be able to overcome these difficulties in light of the comments made. Several governments considered that their legislation was not in harmony with the Convention, and in some cases they emphasized that it was not technically possible to harmonize national legislation with the content of the Convention. The concerns by the Committee of Experts were echoed at the International Labour Conference in 1988, when the Committee on Rural Employment, in its conclusions concerning rural employment, stated that the ILO should investigate the reasons for the limited ratification of Convention No. 141 and promote a tripartite dialogue on the subject.

(5) **Remarks:** The Working Party initiated its examination of this Convention at its March 1997 Session. At that time it was noted that Convention No. 141 reaffirmed the principle of the right of association of rural workers, a right which is already recognized by Right of Association (Agriculture) Convention, 1921 (No. 11) as well as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In its Preamble, Convention No. 141 also takes up the principles established by Articles 1 and 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The importance and relevance of Convention No. 141 were also confirmed by the classification, by the Ventejol Working Parties of 1979 and 1987, of this Convention among Conventions to promote on a priority basis. The ratification level of Convention No. 141 is, however, very far from the levels of ratifications attained by Conventions Nos. 11, 87 and 98 and, as noted above, there are some indications that a number of countries experience difficulties that could "delay or prevent" ratification of the Convention. On the other hand, the Convention has continued to receive ratifications and since the 1988 International Labour Conference, the Convention has received an additional ten ratifications. The continued relevance of Convention No. 141 was recently also underscored by a unanimous resolution to promote the ratification of, inter alia, this Convention at the conclusion of the Tripartite Meeting on Improving the Conditions of Employment and Work of Agricultural Wage Workers in the Context of Economic Restructuring. At the Session of the Working Party in March 1997, the workers' and employers' members agreed that the ratification of the Convention should be promoted, and that, at present, the member States be invited to inform the Office only of the obstacles and difficulties encountered, if any, that might impede or delay its ratification. If warranted, and only to the extent that the consultations resulting from such a decision would warrant it, the possible need for a revision of this Convention could be considered at a later stage.

(6) **Proposals:**
(a) The Working Party might recommend to the Governing Body that it invite the member States to contemplate ratifying Convention No. 141 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of the Convention.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 141 in due course.

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### III. Labour administration

**Statistics**

*C. 63 -- Convention concerning Statistics of Wages and Hours of Work, 1938*

1. **Ratifications:**
   
   (a) Number of current ratifications: 15.
   
   (b) Latest ratification: Nicaragua, 1981.
   
   (c) Ratification prospects: Convention closed to further ratification, 24 April 198, by the coming into force of the revising Labour Statistics Convention, 1985 (No. 160).

2. **Denunciations:**
   
   (a) Pure denunciations: None.
   
   (b) Automatic denunciations: 19, as a result of ratifications of Convention No. 160.

3. **Comments by the Committee of Experts:** Comments pending for 24\(^9\) countries.

4. **Need for revision:** This Convention has been revised by Convention No. 160.

5. **Remarks:** The examination of this Convention was initiated at the March 1997 Session of the Working Party. At that time it was noted that in the course of the Ventejol Working Parties of 1979 and 1987 this Convention was classified in the category of "other instruments".\(^{10}\) In 1988, the revising Convention No. 160 entered into force, and the Committee of Experts issued a General Observation drawing the attention of the member States to the possibility of ratifying Convention No. 160, which
included a range of statistics "far beyond the scope of Convention No. 63" providing for "the elements for describing, understanding, analysing and planning the many complex dimensions of labour's role in the functioning of the modern economy and of society in general". It also noted that Convention No. 160 was drafted to permit a flexible and gradual implementation. Convention No. 63 binds, at present, a limited number of States and there seems to be a rather even flow of ratifications of Convention No. 160 including those of States which had been parties to Convention No. 63. Convention No. 63 retains, however, through the reporting requirements, an interim value as a channel of communication between the Office and the States Parties to Convention No. 63 in the area of labour statistics. It is also a vehicle for promoting the ratification of Convention No. 160 in the technical cooperation activities carried out by the Office. At the March 1997 Session, the Employers' members and the Workers' members agreed that Convention No. 63 was outdated, but disagreed as to the timing of a possible shelving. In view of the foregoing, the Working Party may wish to recommend to the Governing Body to invite the States Parties to Convention No. 63 to ratify Convention No. 160 and to defer a decision to shelve Convention No. 63 to a later stage when its level of ratifications has substantially decreased.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the 15 States Parties to Convention No. 63 to contemplate ratifying the Labour Statistics Convention, 1985 (No. 160), the ratification of which will, ipso jure, involve the immediate denunciation of Convention No. 63.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 63 in due course, including the possibility of shelving, when the ratification level of Convention No. 63 has substantially decreased.

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IV. Social security

10. Social security issues have always been an area of particular concern to the ILO. The early strategy of the ILO was to adopt standards for social insurance aimed at protecting certain categories of workers against specific contingencies. The Working Party has already examined 12 of these Conventions, covering four distinct branches of social security. These early Conventions were all considered outmoded. A remaining set of five early Conventions, all concerning employment injury benefit is examined below. With one exception, the same conclusion is proposed with respect to these early Conventions.

11. This early strategy shifted in the postwar era towards efforts to elaborate standards instituting social security systems, and efforts were made to elaborate a set of minimum standards to cover all branches of social security. These efforts resulted in 1952 in the adoption of the Social Security (Minimum Standards) Convention, 1952 (No. 102). This Convention, which in 87 Articles provides for minimum
standards in nine distinct branches of social security, is also examined below. The proposed conclusion is that these minimum standards maintain their importance and relevance, although the low ratification rate of this Convention, in spite of the flexibility it offers, is a cause for concern.

12. Since then, efforts have been made to proceed branch by branch and gradually elaborate more advanced standards in each of them. The Working Party has already examined the advanced standards in three branches of social security, and the advanced standard in the remaining branch, the Employment Injury Benefits Convention, 1964 (No. 121), is examined below. With the exception of Convention No. 103, which was considered to be due for revision, it was decided to promote the ratification of the advanced standards. In all cases, however, concerns have been expressed regarding the low ratification rate of these modern standards. Information on the reasons therefor is to be solicited from the member States, including on possible needs for revision of these Conventions. As the ensuing examination of Convention No. 121 seems to indicate, a similar pattern emerges in the context of employment injury benefits as well.

13. In parallel to these developments, the ILO has elaborated standards applicable in all branches of social security, but which are specifically relevant to migrant workers. These standards include the Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Maintenance of Social Security Rights Convention, 1982 (No. 157). The latter was examined by the Working Party in March 1996. The former is now being examined and it is proposed to invite member States to ratify it, although its relatively low level of ratification gives rise to a need to call for information on the reasons therefor.

**Comprehensive standards**

**C. 102 -- Social Security (Minimum Standards) Convention, 1952**

(1) **Ratifications:**

(a) Number of current ratifications: 40.


(c) Ratification prospects: This Convention received a considerable number of its ratifications over the first ten years after its adoption. Since then, it has continued to receive ratifications at a slower, but rather even, rate. It seems likely it will receive further ratifications.

(2) **Denunciations:** None.

(3) **Supervisory procedures:** Ratifying States Parties are entitled to limit their ratification to certain parts of the Convention, but must ratify at least three of the parts specified in Article 2 of the Convention. The
reporting requirements under Convention No. 102 can be waived on certain conditions. \( ^{(17)} \) Comments are pending for 22 countries, and observations have been transmitted by workers' organizations in Croatia, Germany, the United Kingdom and Spain. A representation under article 24 of the Constitution has been submitted with regard to Costa Rica. \( ^{(18)} \) The case of Peru was discussed in the Conference Committee on the Application of Standards 1997. \( ^{(19)} \)

(4) Need for revision: In its 1996 General Report, the Committee of Experts noted that, in recent years, the principal concern in this field has become management and rationalization of social security resources, and that various branches of social security have gradually been subjected to a process of reform which has mainly been focused on preserving the financial viability of the systems. The Committee also noted that this process of reform, including certain moves towards privatization, \( ^{(20)} \) was expanding and tending to have greater consequences and demanded renewed attention to international standards on social security. The Committee emphasized that it was essential that the interests of the people protected, and especially the level of social protection, should be taken fully into consideration. \( ^{(21)} \) At the 1997 ILC, the Workers’ and Government representatives were largely in agreement with the Committee’s remarks, while the Employers’ representatives underscored the urgency of current reforms to check cost increases. Some disagreement was also expressed as to the flexible nature of Convention No. 102. \( ^{(22)} \)

(5) Remarks: Convention No. 102 is both a comprehensive and flexible instrument, which sets minimum standards in nine main branches of social security. The importance of this Convention has been reiterated on several occasions, including in previous General Surveys. \( ^{(23)} \) The Ventejol Working Parties of 1979 and in 1987 classified this Convention in the category of Conventions to be promoted on a priority basis. In a 1989 General Survey focusing on old-age benefits, the Committee of Experts expressed its concern over the relatively low ratification rate of, inter alia, Convention No. 102, attributed this to its "technical nature and considerable complexity", \( ^{(24)} \) and hoped that certain issues would have been clarified by the Survey. In the eight years since then, eight additional ratifications or confirmations of pre-existing ratifications following accession to independence of States have been recorded for Convention No. 102. At the same time, however, Convention No. 102 has failed, globally, to attract a significant number of ratifications and additional information seems to be required on the obstacles to ratification encountered, in particular in the light of the current reforms highlighted by the Committee of Experts this year. It is also proposed specifically to request information on the reasons for the limited recourse to the flexibility clauses included in this Convention. It should further be noted, however, that the Office has recently conducted consultations on a portfolio of proposals related to standard setting with a view to proposals for the agenda of the International Labour Conference. \( ^{(25)} \) It emerges from these consultations that there is an interest for standard-setting activities in this area, with a view to elaborating basic social security standards, and that, according to some member States, such standard-setting activities would imply a revision of Convention No. 102. It is therefore suggested to re-examine the status of this Convention at a later stage to consider possible developments in this direction.
(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 102 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention, and of the reasons for the limited recourse to the flexibility clauses included in this Convention.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 102 in due course, including the possible need for a full or partial revision of this Convention, in the light of the information received.

C. 118 -- Equality of Treatment (Social Security) Convention, 1962

(1) Ratifications:

(a) Number of current ratifications: 38.


(c) Ratification prospects: Uncertain. Over the years this Convention has attracted a slow, but rather steady flow of ratifications. At the time of a 1977 General Survey, it had been ratified by 32 countries, and the Committee of Experts considered at the time that the ratification prospects were very good as "over 50 member States possess legislation which, as it stands at present, would enable them to ratify Convention No. 118". Since then, however, the Convention has been ratified only by an additional six member States.

(2) Denunciations: None.

(3) Supervisory procedures: Comments pending for 23 countries, including on observations transmitted by a workers' organization in France. A representation under article 24 of the Constitution alleging non-observance of, inter alia, this Convention, has been submitted against Mauritania and the Committee set up to examine the representation made on recommendations which were adopted in November 1990. Another representation under article 24 of the Constitution alleging non-observance by Iraq of, inter alia, this Convention resulted in recommendations adopted by the Governing Body in June 1991. The Conference Committee on the Application of Standards discussed the cases of the Central African Republic (1991, 1992 and 1993), of Libya (1992), of Iraq (1993 and 1994), and of France (1997).

(4) Need for revision: This Convention has not been revised and no indications have been noted which would indicate any need for a revision.

(5) Remarks: This Convention deals with three distinct, basic matters: equality of treatment, based on
the principle of reciprocity, for nationals and non-nationals on the territory of the ratifying State; the payment of benefits to persons resident abroad; and the maintenance of migrants' rights and the distribution of the resulting burden. (29) As in the case of Convention No. 102, a ratifying State may choose to which one of the nine branches of social security the provisions of the Convention shall apply. In this case, however, there is no minimum requirement concerning the number of branches covered.

The principle of equality is embodied in several other ILO Conventions, (30) and according to the Committee of Experts in 1977 the application of this principle seemed largely followed. The question of payment of benefits to persons resident abroad was described as somewhat more difficult to achieve, and in the case of the maintenance of migrant workers' rights "much apparently remained to be done". (31) The Committee of Experts concluded that Convention No. 118 was an important Convention although it raised "extremely complex technical problems." (32) Subsequently, the Ventejol Working Parties of 1979 and 1987 both classified this Convention in the category of Conventions to be promoted on a priority basis. Most recently, Convention No. 118 was considered in the context of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration held in Geneva 1997, where its importance was reaffirmed. In the "Guidelines on special protective measures for migrant workers in time-bound activities" adopted at this meeting, the ratification of Convention No. 118 was encouraged. (33) This is a Convention whose importance has been underscored on several occasions, but it is also a Convention which has not been widely ratified. It would therefore be desirable to obtain some further information as to the reasons for this.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 118 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 118 in due course.

Employment injury benefits

C. 12 -- Workmen's Compensation (Agriculture) Convention, 1921

(1) Ratifications:

(a) Number of current ratifications: 72.

(b) Latest ratifications: Slovakia, the Czech Republic, and Bosnia and Herzegovina, 1993.

(c) Ratification prospects: Convention No. 12 was adopted before the introduction of the final Article
providing, in the absence of a contrary decision by the Conference, for the closure of the Convention to further ratifications upon the adoption of a revising Convention and the automatic denunciation of the original Convention upon ratification by a State of the revising Convention. The revising Employment Injury Benefits Convention, 1964, (No. 121) could therefore not close Convention No. 12 to further ratifications. It has received 26 additional ratifications or confirmations of pre-existing ratifications following accession to independence of States after the adoption of Convention No. 121.

(2) Denunciations: One (Uruguay), which followed upon the ratification of Convention No. 121.

(3) Comments by the Committee of Experts: Comments pending for eight countries, including on observations transmitted by workers' organizations in New Zealand and Morocco.

(4) Need for revision: In 1959 the ILO Committee of Social Security Experts examined this Convention as well as Conventions Nos. 17, 18 and 42, examined below. The expert group concluded that these pre-war Conventions were "no longer relevant to the concepts and practices in the field of social security". The subsequent review resulted in the adoption in 1964 of the Employment Injury Benefits Convention, 1964 (No. 121), which expressly revises all the above-mentioned four Conventions.

(5) Remarks: Against the background of the revision of Convention No. 12 by Convention No. 121, the Ventejol Working Parties of 1979 and 1987 both classified Convention No. 12 in the category of "other instruments". Until today, however, the revising Convention No. 121, has not attained, by far, the same level of ratification as any of the four Conventions it revised, including Convention No. 12. Furthermore, Convention No. 12 has continued to receive ratifications even after the adoption of Convention No. 121. While it is recommended to examine further the reasons for this flow of ratifications in the context of Convention No. 121, it is proposed to promote the ratification of the more modern standards in this area, i.e. Convention No. 121, together with a concomitant denunciation of Convention No. 12. As Convention No. 12 still binds 72 member States, it seems premature at this stage to consider the question of shelving it. The Working Party may wish to reconsider this question at a later stage when the ratification level of Convention No. 12 has substantially decreased.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite States Parties to Convention No. 12 to contemplate ratifying Convention No. 121 and denouncing Convention No. 12 at the same time.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 12 in due course, including the possibility of shelving, when the ratification level of Convention No. 12 has substantially decreased.

C. 17 -- Workmen's Compensation (Accidents) Convention, 1925
(1) **Ratifications:**

(a) Number of current ratifications: 68.

(b) Latest ratifications: Slovakia, the Czech Republic, and Bosnia and Herzegovina, 1993.

(c) Ratification prospects: Convention No. 17 was adopted before the introduction of the final Article concerning the effect of the adoption of a revising Convention. Although it has been revised by the Employment Injury Benefits Convention, 1964 (No. 121), Convention No. 17 remains open to ratification, and 24 additional ratifications or confirmations of pre-existing ratifications following accession to independence of States have been recorded since the adoption of Convention No. 121.

(2) **Denunciations:** Two (Sweden and Uruguay) following their ratification of Convention No. 121.

(3) **Supervisory procedures:** According to ILO practice, no reports are requested concerning the application of Convention No. 17 from member States which also have ratified Convention No. 121. Comments are pending for 40 countries and non-metropolitan territories, including on observations transmitted by workers' organizations in New Zealand and Portugal. The Conference Committee on the Application of Standards discussed the cases of Kenya (1990, 1991 and 1994), of Colombia (1992), of Portugal (1995) and of New Zealand (1997).

(4) **Need for revision:** Same as for Convention No. 12.

(5) **Remarks:** Same as for Convention No. 12.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite States Parties to Convention No. 17 to contemplate ratifying Convention No. 121 and denouncing Convention No. 17 at the same time.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 17 in due course, including the possibility of shelving, when the ratification level of Convention No. 17 has substantially decreased.

**C. 18 -- Workmen's Compensation (Occupational Diseases) Convention, 1925**

(1) **Ratifications:**

(a) Number of current ratifications: 60.
(b) Latest ratifications: Slovakia, the Czech Republic, and Bosnia and Herzegovina, 1993.

(c) Ratification prospects: This Convention was adopted before the introduction of the final Article concerning the effect of the adoption of a revising Convention. In 1934, when it was revised for the first time, Convention No. 18 had received 29 ratifications, and 30 years later, at the time of the second revision, it had been ratified by 45 member States. Since then it has received 15 additional ratifications or confirmations of pre-existing ratifications following accession to independence of States.

(2) Denunciations: One (United Kingdom) following ratification of Convention No. 42 and five (Ireland, the Netherlands, Senegal, Sweden, and Uruguay) following ratification of Convention No. 121.

(3) Comments by the Committee of Experts: According to ILO practice, no reports are requested concerning the application of Convention No. 18 from member States which have also ratified Conventions Nos. 42 or 121. At present, reports are requested from 25 countries which are bound only by Convention No. 18 and not by Conventions Nos. 42 or 121. Comments are pending for ten countries.

(4) Need for revision: The Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), examined below, partially revises Convention No. 18. A full revision of Convention No. 18 was undertaken, however, by the adoption in 1964 of Convention No. 121. As noted in the context of the examination of Convention No. 12, this Convention was among those four Conventions which, in 1959, was determined to be "no longer relevant to the concepts and practices in the field of social security".

(5) Remarks: Same as for Convention No. 12.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the States Parties both to Convention No. 18 and either one of Conventions Nos. 42 or 121 to denounce Convention No. 18.

(b) The Working Party might recommend to the Governing Body that it invite the States Parties to Convention No. 18 to contemplate ratifying the Employment Injury Benefits Convention, 1964 (No. 121) and denouncing Convention No. 18 at the same time.

(c) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 18 in due course, including the possibility of shelving, when the ratification level of Convention No. 18 has substantially decreased.

C. 19 -- Equality of Treatment (Accident Compensation) Convention, 1925
(1) **Ratifications:**

(a) Number of current ratifications: 116.


(c) Ratification prospects: Convention likely to receive further ratifications. Since 1987 eight ratifications or confirmations of pre-existing ratifications following accession to independence of member States have been recorded for this Convention.

(2) **Denunciations:** None.

(3) **Supervisory procedures:** Comments pending for 22 countries. The Conference Committee on the Application of Standards discussed the cases of Portugal in 1988 and of Malaysia in 1996 and 1997.

(4) **Need for revision:** This Convention has not been revised, but was complemented by the adoption of the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

(5) **Remarks:** This Convention is one of the very early Conventions which provides for the fundamental principle of equality of treatment between national and non-national workers in the areas of social security. Its scope is limited to accident compensation. The comprehensive standard in this area is Convention No. 118. The ILO Committee on Social Security did not include this Convention among those recommended for revision in 1959. The Ventejol Working Party of 1979 classified this Convention among "other instruments", but the Ventejol Working Party of 1987 revised this stance and reclassified it in the category of Conventions to be promoted on a priority basis. This change was explained by saying that "although more recent standards on this question have been laid down in Convention No. 118, that Convention has so far received far fewer ratifications than Convention No. 19". It should be noted, however, that it is expressly provided in Convention No. 118 that it shall not be regarded as revising any existing Convention. The 1987 Ventejol Working Party also noted that "[e]ven if a State has already ratified Convention No. 118, the ratification of Convention No. 19 remains important, to enable its nationals to benefit from the equality of treatment as regards accident compensation by all the States which are parties to that Convention". As noted further by the Ventejol Working Party of 1987, Convention No. 19 has indeed received more ratifications than Convention No. 118. Convention No. 19 is, in fact, one of the most well-ratified Conventions. As a more modern standard is available, it is, however, proposed to invite the States Parties to Convention No. 19 to ratify Convention No. 118. It should also be considered, though, that the principle of reciprocity which is contained in Convention No. 19 has, by reason of the high ratification level of the Convention, created a web of interrelated rights and obligations among a great number of member States, which risk being disrupted if member States would be encouraged to ratify Convention No. 118 and at the same time be encouraged to denounce Convention No. 19. It is therefore suggested not to encourage such a denunciation. It was recommended above to request additional information on the reasons for the
relatively low ratification rate of Convention No. 118 in the context of the examination of this Convention.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the States Parties to Convention No. 19 to contemplate ratifying Convention No. 118, accepting the obligations of the Convention in particular in respect of branch (g) (employment injury benefits).

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 19 in due course.

C. 42 -- Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934

(1) Ratifications:

(a) Number of current ratifications: 42.

(b) Latest ratification: Chile, 1994.

(c) Ratification prospects: Uncertain. This Convention was revised by the Employment Injury Benefits Convention, 1964 (No. 121), but it was not thereby closed to further ratifications. Since the adoption of Convention No. 121, 14 additional ratifications or confirmations of pre-existing ratifications following accession to independence of States have been recorded for Convention No. 42.

(2) Denunciations:

(a) Pure denunciations: None.

(b) Automatic denunciations: 11 denunciations following the ratification of Convention No. 121.

(3) Supervisory procedures: Comments pending for 23 countries, including on observations transmitted by a workers' organization in New Zealand.

(4) Need for revision: This Convention partially revises the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) and has been revised by Convention No. 121.

(5) Remarks: This Convention was also among those four Conventions which, in 1959, were determined to be "no longer relevant to the concepts and practices in the field of social security", and it was, as noted, subsequently revised by Convention No. 121. It should also be noted, however, that while a
ratification of Convention No. 121 entails the immediate denunciation, *ipso jure*, of Convention No. 42, the latter was not thereby closed to further ratifications and several additional ratifications have been recorded for this Convention since it was revised. Neither the Ventejol Working Party of 1979 nor that of 1987 saw any reason to promote Convention No. 42, and classified it in the category of "other instruments". It is therefore proposed to encourage the ratification of Convention No. 121 instead of Convention No. 42. In view of the level of ratifications of Convention No. 42 it seems premature, however, at this stage to consider its shelving. It is therefore recommended to re-examine this question at a later stage when the ratification level of Convention No. 42 has substantially decreased.

(6) **Proposals:**

(a) The Working Party might recommend that the Governing Body invite the States Parties to Convention No. 42 to ratify the Employment Injury Benefits Convention, 1964 (No. 121), the ratification of which will, *ipso jure*, involve the immediate denunciation of Convention No. 42.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 42 in due course, including the possibility of shelving, when the ratification level of Convention No. 42 has substantially decreased.


(1) **Ratifications:**

(a) Number of current ratifications: 22.

(b) Latest ratification: Bosnia and Herzegovina, 1993.

(c) Ratification prospects: Uncertain. This Convention entered into force in 1967 and during the first ten years it attracted 15 ratifications. In the past two decades, seven additional ratifications or confirmations of pre-existing ratifications following accession to independence of States have been recorded for this Convention.

(2) **Denunciations:** None.

(3) **Supervisory procedures:** Comments pending for 11 countries. A representation has been submitted under article 24 of the Constitution alleging non-observance by Sweden of this Convention and the Committee set up to examine the representation made recommendations which were adopted in November 1993.

(4) **Need for revision:** Convention No. 121 consist of 39 Articles, and a Schedule I: "List of occupational diseases". The text of the Convention has not been revised. In conformity with Article 31 of the
Convention, however, Schedule I, may be, and has been, amended separately. An amended Schedule I was adopted in 1980. The question of a renewed revision of Schedule I has been considered on several occasions since 1989 without being selected for inclusion as an agenda item for the International Labour Conference. The issue was raised again at the 267th Session of the Governing Body in November 1996, but a proposal to include the recording and notification of occupational accidents and diseases jointly with a possible revision of Schedule I of Convention No. 121 on the agenda for the 1999 International Labour Conference was not retained. It should be noted, however, that this Convention seems to have had difficulties in taking up the position as the modern standard in this area. Convention No. 121 has not only failed to gain a significant number of ratifications but it has also, by far, failed to attain the same level of ratifications as any one of the four Conventions it revised.

(5) Remarks: As has been noted several times in the course of the examination of the previous social security Conventions, Convention No. 121 resulted from a review of four pre-war Conventions in this field. In relation to Convention No. 102, examined above, Convention No. 121 thus contains a set of advanced standards, causing the pertinent section of Convention No. 102 to "cease to apply" in relation to those who had adopted these minimum standards. The Ventejol Working Parties of 1979 and 1987 classified Convention No. 121 in the category of Conventions to be promoted on a priority basis. The call for revision of the list of occupational diseases noted above does not seem to affect the main part of the Convention. In the light of the foregoing, the low level of ratification of this Convention is striking, particularly considering the ratification rates of the Conventions it revises. It seems relevant to seek to clarify the reasons for this, as well as to establish whether the reform processes affecting several areas of social security referred to in the context of the examination of Convention No. 102 above are affecting the status of the Convention.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 121 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention or that might point to the need for a full or partial revision of this Convention.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 121 in due course.

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V. Employment of children and young persons

14. In the following, two groups of Conventions are examined which reflect the ILO's efforts to abolish child labour and to promote the well-being of children. The first group consists of five Conventions concerning the fixing of minimum age for admission to employment, and the second group consists of three Conventions concerning medical examination of young persons.
Minimum age

15. The ILO's efforts in these fields were initiated already in 1919, when the question of adopting a Convention fixing a minimum age for admission to employment in the industrial sector was on the very first agenda of the ILO. The resulting Minimum Age (Industry) Convention, 1919 (No. 5) was the first in a series of ten Conventions adopted over a period of 55 years which fixed (or revised) minimum ages for admission to employment in different sectors of economic activity.

16. Together, these Conventions created a complex web of standards which had become difficult to assess and apply, and in 1973 the International Labour Conference considered that the time had come "to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour". The general instrument elaborated became the Minimum Age Convention, 1973 (No. 138) which is aimed at constituting a comprehensive instrument "establishing clearer, more systematic and more up-to-date international standards". In addition, a major feature of Convention No. 138 is that it introduces, inter alia, in Article 1, an obligation for the States Parties thereto to "pursue a national policy designed to ensure the effective abolition of child labour". It is therefore an essential tool in the efforts to abolish child labour.

17. As the following examination of five of the minimum age Conventions will reveal, however, the aim gradually to replace the old Conventions by Convention No. 138 has only been partially achieved. Convention No. 138 has attracted ratifications from 55 member States, which represents approximately only one-fourth of the current membership of the ILO. Furthermore, a considerable number of countries remain bound by the older instruments, and four of the older Conventions have continued to receive ratifications even after the adoption and entry into force of Convention No. 138. The Ventejol Working Parties of 1979 and 1987 classified all the ten Conventions revised by Convention No. 138 in the category of "other instruments" and Convention No. 138 among Conventions to be promoted on a priority basis.

18. With a sense of urgency, imposed by the gravity of the problem, the ILO recently stepped up its efforts to abolish child labour and the question is on the agenda for the 86th Session of the Conference in 1998. As the discussions stand at present, the purpose is to elaborate standards complementary to Convention No. 138 targeting the most intolerable forms of child labour, and a revision of Convention No. 138 is therefore not at issue. Convention No. 138 is thus intended to remain as the most up-to-date standard in the area of minimum age for admission to employment. The promotion of ratification of Convention No. 138 with a concomitant denunciation of the older Conventions on minimum age is thus the general strategy proposed. The question of a possible shelving of the older Conventions could be examined at a later stage when the levels of ratification of these Conventions substantially have decreased.
Medical examination

19. In the area of employment of children and young persons, there is a set of three Conventions which are aimed at the protection of children at work. These are the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) and the Medical Examination of Young Persons (Underground Work), 1965 (No. 124). These three Conventions are similar in structure, but have a scope of application limited to distinct economic sectors.

20. As is examined below in more detail, the substantive issue regulated by these Conventions seems to retain its present-day value. It seems more questionable, however, whether this issue should be regulated in three distinct Conventions. As noted in the context of the examination of the minimum age Conventions, the ILO strategy to elaborate distinct Conventions in different areas of economic activity has given way to efforts to adopt more comprehensive instruments. Contrary to the situation in the field of minimum age before the elaboration of Convention No. 138, however, the consolidation of the three instruments concerning medical examination of young persons into one Convention would seem to raise less complex issues and could perhaps be done in a simplified manner. The strategy suggested is therefore to promote the ratification of these three Conventions in view of the importance of the subject they regulate, and at the same time invite member States to provide their views on the need for a full or partial revision of these Conventions by means of a single consolidating Convention.

Minimum age

C. 5 -- Minimum Age (Industry) Convention, 1919

(1) Ratifications:

(a) Number of current ratifications: 46.

(b) Latest ratification: Viet Nam, 1994.

(c) Ratification prospects: Virtually nil. Convention No. 5 has been revised on two occasions. It was initially revised by the Minimum Age (Industry) Convention (Revised), 1937 (No. 59). Convention No. 5 was adopted before the revision of the final Article concerning the effect of the adoption of a revising Convention. The revising Convention No. 59 could therefore not close Convention No. 5 to further ratifications. Article 10(3) of Convention No. 138 introduces a special method to close Convention No. 5 to further ratifications. It provides that it shall be closed to further ratification "when all the parties thereto have consented to such closing by ratification of [Convention No. 138] or by a declaration communicated to the Director-General of the International Labour Office". Convention No. 5 has, in fact, continued to receive ratifications or confirmations of pre-existing ratifications following accession to independence of States even after having been revised; 12 ratifications have been recorded since 1973.
(2) **Denunciations:**

(a) Pure denunciations: Two (Bulgaria and Uruguay) following the ratification of Convention No. 59. (These two member States have subsequently ratified Convention No. 138.)

(b) Other denunciations: 23 denunciations following the ratification of Convention No. 138. Pursuant to Article 10 (5)(a) of Convention No. 138, acceptance of the obligations of Convention No. 138 "shall involve the denunciation of [Convention No. 5] in accordance with Article 12 thereof".

(3) **Supervisory procedures:** According to ILO practice, no reports are requested concerning the application of Convention No. 5 from member States which have also ratified Convention No. 59. \(^{(53)}\) Comments pending for 18 countries.

(4) **Need for revision:** As noted above, Convention No. 5 has been revised by Convention No. 59 as well as by Convention No. 138.

(5) **Remarks:** Convention No. 5 is one of the three early Conventions which fixed a minimum age of 14 years. Subsequent Conventions, including both Convention No. 59 and Convention No. 138, provide for a minimum age of 15. The first revision of Convention No. 5 did not significantly alter its ratification rate. Convention No. 138 has had a greater impact -- 22 countries have ratified Convention No. 138 and denounced Convention No. 5 -- but, while Convention No. 138 is somewhat better ratified than Convention No. 5, the latter still binds a substantial number of countries. As Convention No. 138 is the modern, comprehensive standard in terms of minimum age for admission to employment of work, it is proposed to promote its ratification together with a concomitant denunciation of Convention No. 5. The question of a possible shelving of Convention No. 5 could be examined at a later stage, when its level of ratifications has substantially decreased.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite the States Parties to Convention No. 5 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138) and denouncing Convention No. 5 at the same time.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 5 in due course.

**C. 10 -- Minimum Age (Agriculture) Convention, 1921**

(1) **Ratifications:**

(a) Number of current ratifications: 30
(b) Latest ratifications: Czech Republic, Slovakia, 1993.

(c) Ratification prospects: Virtually nil. Convention No. 10 was revised by Convention No. 138, but it was not thereby closed to further ratifications as it was adopted before the revision of the final Article concerning the effect of the adoption of a revising Convention. Article 10(3) of Convention No. 138 provides, however, that Convention No. 10 shall be closed to further ratification "when all the parties thereto have consented to such closing by ratification of [Convention No. 138] or by a declaration communicated to the Director-General of the International Labour Office". Thirteen additional ratifications or confirmations of pre-existing ratifications following accession to independence of States have been recorded since 1973.

(2) Denunciations: 24 following the ratification of Convention No. 138. Pursuant to Article 10(5)(b) of Convention No. 138, acceptance of the obligations of Convention No. 138 "in respect of agriculture shall involve the denunciation of [Convention No. 10] in accordance with Article 9 thereof".

(3) Comments by the Committee of Experts: Comments pending for 22 countries and non-metropolitan territories, including on observations transmitted by a workers' organization in Sri Lanka.

(4) Need for revision: As noted above, Convention No. 10 has been revised by Convention No. 138.

(5) Remarks: As in the case of Convention No. 5, Convention No. 10 is one of the three early Conventions which fixed a minimum age of 14 years. Subsequent Conventions provide for a minimum age of 15. Convention No. 10 still binds a substantial number of countries and it is noteworthy that one-third of the current ratifications originate from member States which have opted to ratify this Convention instead of Convention No. 138. However, as Convention No. 138 is the modern, comprehensive standard in terms of minimum age for admission to employment or work, it is proposed to promote its ratification which, in respect of agriculture, will involve the denunciation of Convention No. 10. The question of a possible shelving of Convention No. 10 could be examined at a later stage when its level of ratifications has substantially decreased.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the State Parties to the Minimum Age (Agriculture) Convention, 1921 (No. 10) to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which, in respect of agriculture, will involve the denunciation of Convention No. 10 as provided in Article 10(5)(b) of Convention No. 138.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 10 in due course.

C. 33 -- Minimum Age (Non-Industrial Employment) Convention, 1932
(1) Ratifications:

(a) Number of current ratifications: 16.\(^{(54)}\)

(b) Latest ratifications: Djibouti and Comoros, 1978.

(c) Ratification prospects: Convention closed to ratification, 29 December 1950, by the coming into force of the revising Minimum Age (Non-Industrial Employment) Convention, (Revised), 1937 (No. 60).

(2) Denunciations: Nine automatic denunciations, three as a result of the ratification of Convention No. 60\(^{(55)}\) and six as a result of the ratification of the Minimum Age Convention, 1973 (No. 138). The denunciation of Convention No. 33 is automatic when the obligations of Convention No. 138 in respect of non-industrial employment are accepted.\(^{(56)}\)

(3) Comments by the Committee of Experts: Comments pending for nine countries and non-metropolitan territories.

(4) Need for revision: Convention No. 33 entered into force in 1935 and was revised only two years later by Convention No. 60, and subsequently also by Convention No. 138.

(5) Remarks: Although revised in 1937 by Convention No. 60, which closed Convention No. 33 already in 1950 to further ratifications, a series of subsequent confirmations of pre-existing ratifications following accession to independence of member States have been recorded with respect to this Convention. With the exception of one European country,\(^{(57)}\) the member States which today remain bound by this Convention are all African States whose ratifications were recorded in the 1960s. The scope of this Convention -- non-industrial employment -- is defined in Convention No. 33 as the residual area of employment not covered by other Conventions at the time, i.e. industrial employment, employment at sea and agriculture.\(^{(58)}\) In this area, Convention No. 33 prescribes a basic minimum age of 14 years for admission to employment or work, as compared to Convention No. 138 which prescribes a general minimum age of 15. As Convention No. 138 is the modern, comprehensive standard in terms of minimum age for admission to employment of work, it is proposed to promote its ratification, which will involve the immediate denunciation of Convention No. 33. The question of a possible shelving of Convention No. 33 could be examined at a later stage when its level of ratifications has substantially decreased.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the States Parties to Convention No. 33 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which will, ipso jure, involve the immediate denunciation of Convention No. 33 as
provided in Article 10(4)(b) of Convention No. 138.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 33 in due course.

C. 59 -- Minimum Age (Industry) Convention (Revised), 1937

(1) Ratifications:

(a) Number of current ratifications: 20.

(b) Latest ratifications: Guatemala, 1989 and Turkey, 1993.

(c) Ratification prospects: Uncertain. The revising Convention No. 138 did not close Convention No. 59 to further ratification, and Convention No. 59 has received an additional six ratifications since the adoption of Convention No. 138.

(2) Denunciations: 16 as a result of the ratification of Convention No. 138. The denunciation of Convention No. 59 following ratification of Convention No. 138 is immediate, on condition that a minimum age of not less than 15 years is specified pursuant to Article 2 of Convention No. 138. This condition was not satisfied in one case with the effect that this member State is bound both by Convention No. 59 and Convention No. 138.

(3) Comments by the Committee of Experts: Comments pending for 16 countries and non-metropolitan territories, including on observations transmitted by a workers' and an employers' organization in Turkey.

(4) Need for revision: This Convention partially revises Convention No. 5 and has been revised by Convention No. 138.

(5) Remarks: This Convention is the first minimum age Convention to raise the basic minimum age for admission of children to employment to 15. As noted in the context of the examination of Convention No. 5 above Convention No. 59 has only had a limited effect on the ratification rate of Convention No. 5. Since the adoption of Convention No. 138, however, the ratification rate of Convention No. 59 has almost halved. As Convention No. 138 is the modern, comprehensive standard in terms of minimum age for admission to employment of work, it is proposed to promote its ratification which will involve the denunciation of Convention No. 59 on the condition provided in Convention No. 138. As Convention No. 59 still binds a not insignificant number of member States, the question of a possible shelving of Convention No. 59 could be examined at a later stage when its level of ratifications has substantially decreased.

(6) Proposals:
(a) The Working Party might recommend to the Governing Body that it invite the States Parties to Convention No. 59 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138) the ratification of which will, *ipso jure*, involve the denunciation of Convention No. 59 on the condition stated in Article 10(4)(a) of Convention No. 138.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 59 in due course.

### C. 123 -- Minimum Age (Underground Work) Convention, 1965

#### (1) Ratifications:

(a) Number of current ratifications: 32.

(b) Latest ratification: Viet Nam, 1995.

(c) Ratification prospects: Convention likely to receive further ratifications. Although this Convention was revised by Convention No. 138, the latter did not close it to further ratification. Since the adoption of Convention No. 138, Convention No. 123 has received an additional 12 ratifications or confirmations of pre-existing ratifications following accession to independence of States.

#### (2) Denunciations: Ten as a result of the ratification of Convention No. 138. The denunciation of Convention No. 123 is immediate upon ratification of Convention No. 138 on condition that a minimum age not less than that accepted for Convention No. 123 is specified pursuant to Article 2 of Convention No. 138. An additional six member States have also ratified Convention No. 138, but as they do not satisfy the condition in Article 10(4)(f) of Convention No. 138, they remain bound by Convention No. 123.

#### (3) Comments by the Committee of Experts: Comments pending for 12 countries.

#### (4) Need for revision: This Convention has been revised by Convention No. 138.

#### (5) Remarks: This Convention applies to underground work, an area involving work which is particularly hazardous to young children. In this area, the Convention fixes 16 years as the higher minimum age for admission to employment. The corresponding provision in Convention No. 138 is 18 years. As Convention No. 138 is the modern, comprehensive standard in terms of minimum age for admission to employment or work, it is proposed to promote its ratification which will cause the denunciation of Convention No. 123 on the condition provided in Convention No. 138. As Convention No. 123 still binds a significant number of member States, the question of a possible shelving of Convention No. 123 could be examined at a later stage when its level of ratifications has substantially decreased.
(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the States Parties to the Minimum Age (Underground Work) Convention, 1965 (No. 123) to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which will, *ipso jure*, involve the immediate denunciation of Convention No. 123 on the conditions stated in Article 10(4)(f) of Convention No. 138.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 123 in due course.

**Medical examination**

* C. 77 -- *Medical Examination of Young Persons (Industry) Convention, 1946*

(1) **Ratifications:**

(a) Number of current ratifications: 43.


(c) Ratification prospects: Convention likely to receive further ratifications. Since its adoption it has attracted a slow, but steady, flow of ratifications, with no long interruptions.

(2) **Denunciations:** None.

(3) **Comments by the Committee of Experts:** Comments pending for 17 countries and one non-metropolitan territory, including on observations transmitted by workers' organizations in Spain and Turkey.

(4) **Need for revision:** This Convention has not been revised.

(5) **Remarks:** The main substantive object of this Convention as well as Conventions Nos. 78 and 124, examined below, is to ensure that, prior to taking up employment and at certain intervals, young persons under the age of 18 (or 21 in certain cases) be medically examined at no expense for the young person, or his/her parents. While the modern approach in this area, as reflected in the comprehensive Occupational Health Services Convention, 1985 (No. 161)[62] and Recommendation (No. 171), is to emphasize preventive occupational medicine and occupational health services, this latter Convention does not include a requirement that a medical examination by a specialist, establishing the medical fitness of a young person for the type of work envisaged is a precondition for engaging a young person as provided for in this Convention as well as in Conventions Nos. 78 and 124. These three Conventions
therefore retain a present-day value. The Ventejol Working Parties of 1979 and 1987 both classified
them among Conventions to be promoted on a priority basis. It is therefore proposed to promote the
ratification of this Convention. In addition, and in view of the tendency of the ILO to move away from
sectoral Conventions, it is proposed that the member States be invited to consider a possible
consolidation of this Convention with Conventions Nos. 78 and 124.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite member States to
contemplate ratifying the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay
the ratification of this Convention.

(b) The Working Party might recommend to the Governing Body that it invite member States to
contemplate the need for a full or partial revision of this Convention and its possible consolidation with
the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
and the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124).

(c) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 77 in
due course.

C. 78 -- Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946

(1) Ratifications:

(a) Number of current ratifications: 39.


(c) Ratification prospects: Convention likely to receive further ratifications. Since its adoption it has
attracted a slow, but steady, flow of ratifications, with one interruption in 1983-1990 when no
ratifications were recorded.

(2) Denunciations: None.

(3) Supervisory procedures: Comments pending for 17 countries, including on an observation
transmitted by a workers' organization in Spain.

(4) Need for revision: This Convention has not been revised.

(5) Remarks: Same as for Convention No. 77.
(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78), and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention.

(b) The Working Party might recommend to the Governing Body that it invite member States to contemplate the need for a full or partial revision of this Convention and its possible consolidation with the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) and the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124).

(c) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 78 in due course.

**C. 124 -- Medical Examination of Young Persons (Underground Work) Convention, 1965**

(1) **Ratifications:**

(a) Number of current ratifications: 41.

(b) Latest ratifications: Viet Nam, 1994.

(c) Ratification prospects: Convention likely to receive further ratifications. Over the years it has received a slow, but steady, flow of ratifications.

(2) **Denunciations:** None.

(3) **Comments by the Committee of Experts:** Comments pending for eight countries.

(4) **Need for revision:** This Convention has not been revised.

(5) **Remarks:** Same as for Convention No. 77.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124), and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention.
(b) The Working Party might recommend to the Governing Body that it invite member States to contemplate the need for a full or partial revision of this Convention and its possible consolidation with the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) and the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78).

(c) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 124 in due course.

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VI. Indigenous and tribal peoples

C. 107 -- Indigenous and Tribal Populations Convention, 1957

(1) Ratifications:

(a) Number of current ratifications: 21.

(b) Latest ratifications: Iraq, 1985.

(c) Ratification prospects: Closed for ratification, 5 September 1991, by the entry into force of the revising Indigenous and Tribal Peoples Convention, 1989 (No. 169).

(2) Denunciations: Six automatic denunciations as a result of the ratification of Convention No. 169.

(3) Comments by the Committee of Experts: Comments pending for 15 countries, including on observations transmitted by workers' organizations in Argentina, Brazil, Ecuador, and India.

(4) Need for revision: This Convention has been revised by Convention No. 169.

(5) Remarks: The Ventejol Working Parties of 1979 and 1987 both classified this Convention in the category of Conventions to be promoted on a priority basis. This was, however, prior to the decision to place the partial revision of Convention No. 107 on the agenda of the 75th (June 1988) Session of the Conference. Since the adoption and the entry into force of Convention No. 169, that Convention is the most up-to-date standard in this area which should be promoted for ratification. In a General Observation concerning Convention No. 107 published in 1992, the Committee of Experts noted that "Convention No. 169 is more oriented towards respect for and protection of indigenous and tribal peoples' cultures, ways of life and traditional institutions than is Convention No. 107". Recalling that 1993 was the International Year for the World's Indigenous People, the Committee encouraged governments which had ratified Convention No. 107 to "give serious consideration to ratifying Convention No. 169". The ILO cooperates with the United Nations in coordinating the "Programme of activities for the
International Decade of the World's Indigenous People", and takes part in the Working Group of the UN Commission on Human Rights preparing the Draft Declaration on the Rights of Indigenous Peoples. Based on the foregoing, it is proposed to recommend the promotion of Convention No. 169. In view of the level of ratifications of Convention No. 107, it seems premature, however, at this stage to consider the shelving of this Convention. It is therefore proposed to re-examine this question at a later stage, when the ratification level of Convention No. 107 has substantially decreased.

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite the States Parties to the Indigenous and Tribal Populations Convention, 1957 (No. 107) to contemplate ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which will, ipso jure, involve the immediate denunciation of Convention No. 107.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 107 in due course, including the question of shelving, when the ratification level of Convention No. 107 has substantially decreased.

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VII. Other special categories

Dock workers

C. 137 -- Dock Work Convention, 1973

(1) Ratifications:

(a) Number of current ratifications: 22.

(b) Latest ratification: Brazil, 1994.

(c) Ratification prospects: Uncertain. Since its entry into force in 1975, it has received the majority of its ratifications before 1983, and in the past 13 years it has only received a single ratification.

(2) Denunciations: None.

(3) Comments by the Committee of Experts: Comments pending for 12 countries, including on observations transmitted by workers' organizations in Brazil, France, Spain, and Sweden. These comments and observations concern, inter alia, the interpretation of Articles 2, 3 and 4 in the context of reforms in the organization of work in the port sector.
(4) **Need for revision:** This Convention has not been revised.

(5) **Remarks:** Convention No. 137 was adopted to minimize the social repercussions of new methods of cargo handling in docks. The importance of this Convention was emphasized by the Ventejol Working Parties of 1979 and 1987 which both placed this Convention among Conventions to promote on a priority basis. Since its adoption and entry into force, however, ever newer methods in cargo handling -- containerization in particular -- have revolutionized the national and international transport and port industries in most countries. The social and labour problems caused by the structural adjustments in the port industry resulting from these and other general economic trends have recently been discussed at two tripartite meetings organized by the ILO. In the course of the latter meeting, the views were sharply divided as to the continued relevance of Convention No. 137. The resolution unanimously adopted at the meeting referred to Convention No. 137 only in the context of requesting the ILO to prepare, at its earliest convenience, a General Survey of the difficulties experienced by member States in ratifying and applying this Convention. It was proposed for a General Survey in 1998, but this proposal was not retained. Against this background, the Working Party may wish to recommend the status quo with respect to this Convention until such time as a decision has been taken with respect to the request for a General Survey concerning its application.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body the maintenance of the status quo with regard to Convention No. 137.

**Nursing personnel**

*C. 149 -- Nursing Personnel Convention, 1977*

(1) **Ratifications:**

(a) Number of current ratifications: 36.

(b) Latest ratification: Guatemala, 1995.

(c) Ratification prospects: Convention likely to receive further ratifications. Since its adoption it has received a slow, but steady, flow of ratifications.

(2) **Denunciations:** None.

(3) **Comments by the Committee of Experts:** Comments pending for 39 countries and non-metropolitan territories, including on observations transmitted by workers' organizations in Finland, France, Italy,
Portugal and Uruguay.

(4) **Need for revision:** This Convention has not been revised.

(5) **Remarks:** By reason of the size of the workforce, the health sector is a quantitatively very large sector, and by reason of the special role it occupies in society, it is a sector almost universally subjected to special, sometimes very complex rules and regulations. In addition to the more general Medical Care Recommendation, No. 69 (1944), Convention No. 149 and Recommendation No. 157 are the only specifically applicable labour standards in this area. The Ventejol Working Parties of 1979 and of 1987 both classified this Convention among the Conventions to be promoted on a priority basis. In General Observations published in 1990 and again in 1994, the Committee of Experts drew the attention to the particular risks faced by nursing personnel of accidental exposure to HIV, and the need to take measures to adapt the legislation on health and safety at work to these risks. The Governing Body decided in 1990 to set up a Standing Technical Committee for Medical Services. At its first session in 1992, this Committee focused on a discussion of "Equality of opportunity and treatment between men and women in health and medical services". The Committee decided, inter alia, to recommend that a General Survey be undertaken on the implementation of this Convention, and that its ratification be promoted. It has been proposed for a General Survey on three occasions, but due to priority given to other proposals, it has not yet been retained. In view of the foregoing, the Working Party may wish to recommend to the Governing Body to promote the ratification of this Convention while requesting the member States to provide information to the Office of the obstacles and difficulties encountered, if any, that might prevent or delay ratification. Such a decision would not preclude a subsequent decision by the Governing Body to select this Convention for a General Survey. On the contrary, the information solicited and received pursuant to such a decision might assist the Governing Body in the decision whether or not to retain this Convention for a General Survey at a later stage.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 149 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 149 in due course.

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**VIII. Final remarks**

**Forthcoming meetings of the Working Party**
21. At its next meeting in March 1998, the Working Party could initiate an examination of the needs for revision of ILO Recommendations. It could be envisaged to review the Recommendations on a case-by-case basis, by subject matter, in the light of the decisions already taken with respect to their corresponding Conventions. In order not to overburden the Working Party at its March 1998 Session, the Office proposes an initial examination of approximately half of the Recommendations, and to prepare a document on these Recommendations for March 1998.

22. Having thus concluded the examination of all the Conventions within its mandate, except for the Conventions concerning seafarers and fishermen, the Working Party may want to consider a procedure to be adopted for the examination of these latter Conventions. The Office has already informally consulted the constituent members of the Joint Maritime Commission (JMC) who have proposed a "fast-track scenario" to examine Conventions and Recommendations on seafarers during the first part of 1998. If the Working Party so desires, the constituent members of the JMC could carry out a case-by-case analysis of the Conventions and Recommendations in question and the Office could submit proposals for a tripartite examination by the Working Party in November 1998. An analogous procedure involving the International Organization of Employers and the International Transport Workers' Federation is proposed with respect to the Conventions and Recommendations concerning fishermen, also with a view to a tripartite examination by the Working Party in November 1998.

23. The Working Party may also wish to undertake an examination of other questions within its terms of reference. One of these questions concerns the methods of revision of international labour standards. The pertinent section of the terms of reference of the Working Party is reproduced below. It may be recalled that the LILS Committee initiated a consideration of certain aspects of this issue at its March-April 1995 Session, including, inter alia, the question of the advantages and disadvantages of a total revision of Conventions, the possibilities for partial revision of Conventions by way of additional protocols, as well as procedures set up or envisaged to facilitate the revision of Conventions. If the Working Party so wishes, the Office could prepare a document for its March 1998 Session that would analyse the different methods for revision that have been at the disposal of the Organization until now and that it could avail itself of in the future.

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


Point for decision: Paragraph 24.

1. GB.264/9/2, para. 16 and GB.265/8/2, para. 24. A brief summary of the criteria adopted and the methodology applied is available in the introduction to the papers submitted to the Working Party in Nov. 1996, paras. 2-4 containing the second stage of the examination of the needs for revision of Conventions. See GB.267/LILS/WP/PRS/2.


5. Six States (Afghanistan, Brazil, El Salvador, India, Kenya, the Philippines), parties to Convention No. 141, have not ratified Convention No. 87.

6. Seven States (Afghanistan, El Salvador, India, Mexico, Switzerland, Uruguay and Zambia), parties to Convention No.141 have not ratified Convention No. 98.

7. Resolution concerning the Conventions relating to fundamental human rights and other Conventions that are of major importance to agriculture (TMAWW/1966/14).


9. Six of these comments are addressed to member States who subsequently have denounced Convention No. 63 by ratifying Convention No. 160.

10. The Ventejol Working Parties of 1979 and 1987 had classified international labour standards into four categories: (1) instruments for promotion on a priority basis; (2) instruments for revision; (3) other existing instruments; and (4) subjects for new standards. The purpose of the first category was to identify the modern instruments that constituted useful objectives on a universal basis. The instruments that could not be classified in this category or in that of "instruments to be revised" were placed in the category of "other instruments". The latter category thus comprised three kinds of Conventions: those that constituted useful interim targets for States that were not in a position to ratify the more recent instruments, the Conventions closed to further ratifications and Conventions that were obsolete (Final report of the Working Party on International Labour Standards, in *Official Bulletin*, Vol. LXII, 1979, Series A, special number, paras. 3-9, and Final report of the Working Party on International Labour Standards, ibid., Vol. LXX, 1987, Series A, Appendix III, paras. 2-4).

11. Of the latest ten ratifications of Convention No. 160, seven States were previously Parties to Convention No. 63.

12. The *Sickness Insurance (Industry) Convention, 1927 (No. 24)* and the *Sickness Insurance (Agriculture) Convention, 1927 (No. 25)*: Deferred decision to shelve (Nov. 1996) (GB.267/LILS/WP/PR5/2, IV.1-2 and GB.267/9/2, paras. 36-37). The *Old Age Insurance (Industry, etc.. and Agriculture) Conventions, 1933 (Nos. 35 and 36)*, the *Invalidity Insurance (Industry, etc and Agriculture) Conventions, 1933 (Nos. 35 and 36)*
Conventions, 1933 (Nos. 37 and 38), the Survivors’ Insurance (Industry, etc. and Agriculture) Conventions (Nos. 39 and 40) and the Maintenance of Migrant’s Pension Rights Convention, 1935 (No. 48): Shelved with immediate effect (Mar. 1996) (GB.265/LILS/WP/PRS/1, III.6 and IV.3-9 and GB.265/LILS/5, paras. 40 and 52). The Unemployment Provision Convention, 1934 (No. 44): Deferred decision to shelve (Nov. 1996) (GB.267/LILS/WP/PRS/2, V.1 and GB.267/9/2, paras. 39-41). The Maternity Protection Convention, 1919 (No. 3): To be considered for inclusion in the revision of Convention No.103 (GB.267/LILS/WP/PRS/2, para. V.1 and GB.267/9/2, paras. 39-42).

13. The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

14. The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and the Medical Care and Sickness Benefits Convention, 1969 (No. 130): Member States were invited to contemplate ratifying these Conventions and to inform the Office on the obstacles and difficulties encountered, if any, as well as of the possible need to revise these Conventions (Mar. 1996) (GB.265/LILS/WP/PRS/1, paras. V.6 and V.7 and GB.265/LILS/5, paras. 67 and 68). The Maternity Protection Convention (Revised), 1952 (No. 103) is on the 1999 agenda of the International Labour Conference with a view to its revision.

15. The advanced standard in the unemployment benefits branch, the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), has not been examined by the Working Party as it was adopted after 1985. In the context of the examination of Convention No. 44, however, the State Parties to Convention No. 44 were invited to: (a) contemplate ratifying Convention No. 168 and denouncing Convention No. 44 at the same time; and (b) to inform the Office on the possible difficulties inherent in the Convention, legislation or national practice that might prevent or delay the ratification of Convention No. 168.

16. Convention No. 157, (Mar. 1996): Member States were invited to contemplate ratifying this Convention and to inform the Office on the obstacles and difficulties encountered, if any, as well as of the possible need to revise this Convention (GB. 265/LILS/WP/PRS/1, para. V.5 and GB.265/LILS/5, para. 67).

17. No reports are requested from a country which has ratified the more advanced standards in Conventions covering the parts of Convention No. 102 that the country in question is bound by. A ratification of Part II entails, however, a continued reporting obligation. As at 30 June 1996 only one country, Ecuador, satisfied these conditions and is relieved from reporting on the application of Convention No. 102.

18. In four other representations submitted under article 24, concerning the Federal Republic of Germany, Mauritania, and in two cases, Peru, the proceedings were closed prior to reaching consideration of issues of substance.

19. In the course of the discussions, the Government representative called on the ILO to revise the provisions of Convention No. 102 "to allow for new approaches to social security now being adopted in
various countries of the world.

20. An example in point is the case of Peru where legislation adopted in 1992 concerning private pension schemes has raised concerns by the Committee of Experts. As noted above, this case was discussed by the Conference Committee on the Application of Standards in 1997.


22. ILC, Record of Proceedings, 85th Session, 1997, Provisional Record No. 19, paras. 66-70.


24. ILO: Social security protection in old age, General Survey of the Reports relating to the Social Security (Minimum Standards) Convention (No. 102), 1952, the Invalidation, Old-Age and Survivors’ Benefits Convention (No. 128), and Recommendation (No. 131), 1967, in so far as they apply to old-age benefits, International Labour Conference, 76th Session, 1989, paras. 262-263.

25. GB.270/2 (see in particular H.21, paras. 279-284).


27. ibid., paras. 144-145.

28. See GB.250/15/25, para. 52.


30. For a (somewhat dated) list of such Conventions, see ibid., paras. 10-1. The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) is an early example of such a Convention and this Convention is examined below.

31. ibid., paras. 137-142.


35. As of 30 June 1997, this concerned Belgium, Bolivia, Finland, Germany, Croatia, Bosnia and Herzegovina, Luxembourg, Netherlands, Yugoslavia, Zaire, Guinea and Slovenia. Although the former Yugoslav Republic of Macedonia also has ratified both Conventions, reports under Convention No. 17 are still requested pending receipt of the first report on Convention No. 121.

36. As of 30 June 1997 24 member States had ratified both Conventions Nos. 18 and 42, namely Algeria, Argentina, Australia, Austria, Bulgaria, Burundi, Czech Republic, Chile, Comoros, Cuba, Denmark, France, Hungary, India, Iraq, Italy, Morocco, Myanmar, Norway, Papua New Guinea, Poland, Rwanda, Slovakia and Spain. At the same time 12 member States had ratified both Conventions Nos. 18 and 121, namely Belgium, Bosnia and Herzegovina, Croatia, Finland, Germany, Guinea, Japan, Luxembourg, Slovenia, Yugoslavia, Zaire, and the former Yugoslav Republic of Macedonia.

37. Although the former Yugoslav Republic of Macedonia also has ratified both Conventions Nos. 18 and 121, a report under Convention No. 18 is still requested pending receipt of the first report on Convention No. 121.

38. See footnote 34.

39. Examined above.

40. See further under the examination of Convention No. 121 above.


42. For reasons left unexplained in the preparatory works of Convention No. 121.

43. Convention No. 42 was adopted after the final Articles revision, so a ratification of Convention No. 121 entails an automatic denunciation of Convention No. 42.

44. See footnote 34.

45. To it is also annexed the "International Standard Industrial Classification of all Economic Activities". This international standard was adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 Aug. 1948 and is reproduced, as amended, in this annex. Pursuant to article 20, this international standard "as at any time further amended" shall be used for the purposes
of that article. A further amended international standard is annexed to the Medical Care and Sickness Benefits Convention, 1969 (No. 130).


47. Four of the ten minimum age Conventions are maritime Conventions. The Working Party has already examined the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60) which was shelved by the Governing Body in Nov. 1996 (see GB.265/8/2, para. 35 and GB.265/LILS/ WP/PRS/1, p. 12). Convention No. 60 is a possible candidate for abrogation pursuant to the amendment to the Constitution adopted at the 85th International Labour Conference, 1997.


50. As of 30 June 1997.

51. For details, see below.

52. In addition, in the field of maritime Conventions there is the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), which, however, is outside the Working Party's present mandate.

53. As of 30 June 1997, this concerned four countries: Albania, Fiji, Sierra Leone and Swaziland.

54. Fifteen of these ratifications result from confirmations of pre-existing ratifications following accession to independence of States and were recorded after the closure to further ratifications of the Convention.

55. Followed by a subsequent ratification of Convention No. 138 entailing an automatic denunciation of Convention No. 60.

56. Art. 10(4)(b) of Convention No. 138.

57. Austria.
58. The Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Sea) Convention, 1920 (No. 7) and the Minimum Age (Agriculture) Convention, 1921 (No. 10).

59. See Art. 10(4)(a) of Convention No. 138.

60. Guatemala.

61. See Art. 10(4)(f) of Convention No. 138.


65. The Workers' representatives argued strongly in favour of a vigorous promotion of ratification of the Convention, while the Employers' representatives maintained that "Convention No. 137 was obsolete and did not respond to the modern needs for the port industry". Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, Geneva, 20-24 May 1996, Note on the Proceedings, TMPI/1996/10, paras. 31-32.

66. See GB.267/LILS/7, paras. 7 and 11.

67. It is estimated that, worldwide, some 35 million people are employed in the health sector. (Source: Briefing note published by the Sectoral Activities Department of the ILO.)

68. The Labour Relations (Public Service) Convention, 1978 (No. 157) is also of importance as the health sector in many countries is mainly a public sector.

69. Conclusions (No. 1) concerning equality of opportunity and treatment between men and women in health and medical services, "Future ILO action", para. 37, Note on the Proceedings, STC/HMS/1/1992/13, p. 36.

70. Resolution (No. 3) concerning freedom of association and the right to collective bargaining in the health services, Note on the Proceedings, STC/HMS/1/1992/13, p. 48.

71. GB.267/LILS/WP/PRS/2, appendix.
72. "(3) The methods of revision should be diversified. With very few exceptions, the ILO has opted for the method of the total revision of instruments, following the double-discussion procedure at the Conference. When an instrument needs to be thoroughly overhauled, this method seems the most appropriate; but it is also the most cumbersome. It is not satisfactory for the Organization that partial or technical revisions have been unable to be included in the work of the Conference or that standards sometimes await revision over a very long period. To try and cope with the wide range of needs and situations, various procedures have already been set up, but it has been noted that some of them have not been used -- or very little." GB.262/LILS/3, para. 67. Also reproduced in GB.267/LILS/WP/PRS/2, annex.

73. GB.262/LILS/3.

For further information, please contact the Official Relations Branch at Tel: +41.22.799.7732, Fax: +41.22.799.8944 or by e-mail: RELOFF@ilo.org

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