FIRST ITEM ON THE AGENDA

Deferred examination of six Conventions

Contents

Introduction

I. Employment injury benefits

   I.1 C. 12 -- Workmen's Compensation (Agriculture) Convention, 1921
   I.2 C. 17 -- Workmen's Compensation (Accidents) Convention, 1925
   I.3 C. 18 -- Workmen's Compensation (Occupational Diseases) Convention, 1925
   I.4 C. 42 -- Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934
   I.5 C. 121 -- Employment Injury Benefits Convention, 1964

II. Employment Policy

   II.1 C.96 -- Fee-Charging Employment Agencies Convention (Revised), 1949

Introduction

1. The present paper contains a review of the needs for revision of six Conventions and is submitted for examination by the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards at its sixth meeting.
2. At the 270th Session of the Governing Body (November 1997), the Working Party began its consideration of social security Conventions specifically concerning employment injury benefits. The discussion in the Working Party revealed that the issues raised by the initial examination of five of these Conventions required further reflection and their examination was deferred to the present meeting.

3. Furthermore, it is recalled that the Working Party examined the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) at the 267th Session of the Governing Body (November 1996). At the time it was noted that the question of a revision of Convention No. 96 was on the agenda of the International Labour Conference in 1997, and it was decided that the status of Convention No. 96 should be re-examined at a subsequent meeting of the Working Party in the light of the work at the Conference in 1997. A renewed examination of Convention No. 96 is therefore also included in the present paper.

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I. Employment injury benefits

4. The early strategy of the ILO to adopt standards for social insurance aimed at protecting certain categories of workers against specific contingencies resulted, in the field of employment injury benefits, in the adoption of the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) and the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). Convention No. 18 was subsequently partially revised by the adoption of the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42).

5. In the postwar era efforts shifted towards the elaboration of standards instituting social security systems including a set of minimum standards to cover all branches of social security. These endeavours culminated in the adoption of the Social Security (Minimum Standards) Convention, 1952 (No. 102). Subsequent efforts were directed at elaborating more advanced standards in specific branches of social security. As regards employment injury benefits, this process was initiated in 1959, with an examination of Conventions Nos. 12, 17, 18 and 42 by the ILO Committee of Social Security Experts. The Committee concluded its examination by stating that "overriding reasons" existed for revising or replacing the prewar Conventions with the aim of having "a special international instrument [...] to guide and encourage developing countries where employment injury schemes are frequently the first social security measure to be put into operation." This led to the adoption of the Employment Injury Benefits Convention, 1964 (No. 121) which remains the most recent and up-to-date standard in this field.

6. Convention No. 121 revises Conventions Nos. 12, 17, 18 and 42, but none of the revised Conventions was thereby closed to further ratification. They have all, in fact, continued to receive further ratifications even after the entry into force of Convention No. 121, while at the same time Convention No. 121 has
had difficulties in attracting ratifications.

7. At its meeting in November 1997, the Working Party recognized that this situation was unsatisfactory and that it raised the questions of whether Convention No. 121 was in need of revision and whether the early Conventions continued to have some useful function in furthering the social protection of workers despite having been considered outmoded several decades ago.

8. The Office has re-examined the situation in the light of the discussions held in the Working Party. Objectively there does not seem to be a need for revision of the substance of Convention No. 121. While this Convention is undoubtedly detailed and complex, it is worth underscoring that it also contains several flexibility provisions aimed at facilitating its ratification. The flexibility provisions have, however, only rarely been invoked by member States, despite their potential usefulness in adapting the provisions of Convention No. 121 to national conditions. In an effort to promote the ratification of Convention No. 121, member States' attention should perhaps be drawn to the existence of these flexibility provisions.

9. As regards the continued relevance of the four early Conventions, the situation with respect to Convention No. 12, on the one hand, and the three other Conventions, on the other, is not identical. Convention No. 12 has a limited and precise aim, namely to provide for equal treatment between those engaged in agriculture and industrial workers. As no specific provisions to that effect are contained in Convention No. 121, Convention No. 12 retains its value independently of Convention No. 121.

10. This is not the case, however, with respect to Conventions Nos. 17, 18 and 42, and these Conventions had seemingly already lost their relevance some time ago. In practice they have, nonetheless, proved to have maintained a transitory role, in particular for member States confirming ratifications upon accession to independence. This function seems at present to be diminishing in relevance.

11. In conclusion, while the maintenance of the status quo could be proposed with respect to Convention No. 12, the States parties to Conventions Nos. 17, 18 and 42 could be invited to ratify Convention No. 121 and to denounce the previous outmoded Conventions. When the intended shift to the up-to-date standards has brought satisfactory results, a shelving, or even an abrogation of the outmoded instruments could be envisaged.

12. In this context, it should also be recalled that the Office is due to carry out a review of the underlying principles of social security systems to determine the extent to which they remain valid and applicable. Furthermore, a proposal to consider basic social security standards in the context of a general discussion at the International Labour Conference in the year 2000 is submitted for consideration by the Governing Body at its present session.

I.1 C. 12 -- Workmen's Compensation (Agriculture) Convention, 1921
(1) **Ratifications:**

(a) Number of current ratifications: 73.
(b) Latest ratifications: Slovakia, Czech Republic, Bosnia and Herzegovina, 1993.
(c) Ratification prospects: limited. Convention No. 12 was adopted before the introduction of the final Article providing, inter alia, 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 Convention No. 121 could not therefore close Convention No. 12 to further ratifications. Twenty-eight ratifications have been registered for Convention No. 12 since 1964. Thirteen member States are presently bound both by Convention No. 12 and 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:** Revised by Convention No. 121.

(5) **Remarks:** As noted, Convention No. 12 has continued to receive ratifications until present, despite having been revised. The Ventejol Working Parties of 1979 and 1987 both classified this Convention in the category of "other instruments". However, while Convention No. 121 covers employment injury benefits for those engaged in agriculture, it does not contain specific provisions ensuring equal rights between those engaged in agriculture and industrial workers, as provided for by Convention No. 12. Convention No. 12 thus retains a value independently of Convention No. 121, and the maintenance of the status quo with respect to this Convention is proposed.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body the maintenance of the status quo with respect to Convention No. 12.
(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 12 in due course.

I.2 C. 17 -- Workmen's Compensation (Accidents) Convention, 1925

(1) **Ratifications:**

(a) Number of current ratifications: 68.
(b) Latest ratifications: Slovakia, Czech Republic, Bosnia and Herzegovina, 1993.
(c) Ratification prospects: Virtually nil. Convention No. 17 was adopted before the introduction
of the final Article concerning the effect of the adoption of a revising Convention. Despite having been revised, Convention No. 17 thus remains open to ratification. Twenty-five ratifications have been registered for Convention No. 17 since the adoption of Convention No. 121. Twelve member States are bound both by Convention No. 17 and No. 121. (8)

(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 have also ratified Convention No. 121. (9) Comments are pending for 39 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 in 1990, 1991 and 1994, of Colombia in 1992, of Portugal in 1995 and of New Zealand in 1997.

(4) **Need for revision:** Revised by Convention No. 121.

(5) **Remarks:** The Ventejol Working Parties of 1979 and 1987 both classified this Convention in the category of "other instruments". As noted above, ratifications of this Convention have continued to be registered even after it was revised by Convention No. 121. These ratifications consist almost exclusively, however, of confirmations by States of pre-existing ratifications following their accession to independence. Convention No. 121 covers all aspects of Convention No. 17. This is confirmed by the ILO practice of relieving those member States that have ratified both Conventions Nos. 17 and 121 of reporting obligations under Convention No. 17. It is proposed to promote the ratification of the modern standard in this area, i.e. Convention No. 121, together with a concomitant invitation to denounce Convention No. 17. As a large number of member States are still bound by this Convention, it seems premature at this stage to consider the question of its shelving. The Working Party may wish to reconsider this question at a later stage when the ratification level of this Convention has substantially decreased.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite the States parties both to the Workmen's Compensation (Accidents) Convention, 1925 (No. 17) and the Employment Injury Benefits Convention, 1964 (No. 121) to denounce Convention No. 17.
(b) The Working Party might recommend to the Governing Body that it invite the States parties to Convention No. 17 to contemplate ratifying Convention No. 121 and denouncing Convention No. 17 at the same time.
(c) 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 as a consequence of ratification of Convention No. 121.
**I.3 C. 18 -- Workmen's Compensation (Occupational Diseases) Convention, 1925**

(1) **Ratifications:**

(a) Number of current ratifications: 60.
(b) Latest ratifications: Slovakia, Czech Republic, Bosnia and Herzegovina, 1993.
(c) Ratification prospects: Virtually nil. This Convention was adopted before the introduction of the final Article concerning the effect of the adoption of a revising Convention. Since its full revision in 1964, 15 ratifications have been registered, consisting almost exclusively of confirmations by States of pre-existing ratifications following their accession to independence.

(2) **Denunciations:** One (United Kingdom) following ratification of Convention No. 42 and five (Ireland, 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 that have also ratified Conventions Nos. 42 or 121. At present, reports are requested from 25 countries that 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 revised Convention No. 18, while it was fully revised by Convention No. 121.

(5) **Remarks:** Essentially the same as for Convention No. 17. In addition, however, the ratification situation is slightly more complex in that several member States may be bound by Convention No. 18 and Convention No. 42 and/or of Convention No. 121.

(6) **Proposals:**

(a) The Working Party might recommend to the Governing Body that it invite the States parties to both the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) and the Employment Injury Benefits Convention, 1964 (No. 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 Convention 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 as a consequence of ratification of Convention No. 121.
I.4 C. 42 -- Workmen's Compensation (Occupational Diseases)  
Convention (Revised), 1934

(1) *Ratifications:*

(a) Number of current ratifications: 43.  
(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, 15 ratifications have been registered 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 25 countries, including on observations transmitted by a workers' organization in New Zealand.

(4) *Need for revision:* This Convention partially revises Convention No. 18, examined above, and has been revised by Convention No. 121.

(5) *Remarks:* A ratification of the revising Convention No. 121 entails the immediate denunciation, *ipso jure,* of Convention No. 42, but the latter was not, however, closed to further ratifications by the adoption of Convention No. 121. While a few new ratifications of Convention No. 42 have in fact been registered even since the adoption of Convention No. 121, most of the ratifications recorded since 1964 consist in confirmations by States of pre-existing ratifications following their accession to independence. 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 as a consequence of ratification of Convention No. 121.

I.5 C. 121 -- Employment Injury Benefits Convention, 1964
[Schedule I, amended 1980]

(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 by States of pre-existing ratifications following their accession to independence have been recorded for this Convention.

(2) **Denunciations:** None.

(3) **Supervisory procedures:** Comments pending for 13 countries. A representation was submitted under article 24 of the Constitution alleging non-observance by Sweden of this Convention, and the Governing Body Committee set up to examine the representation made recommendations which were adopted in November 1993.

(4) **Need for revision:** Convention No. 121 consists of 39 Articles and a Schedule I: "List of occupational diseases". The text of the Convention has not been revised. In accordance 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 of the International Labour Conference.

(5) **Remarks:** As noted above, Convention No. 121 resulted from a review of four prewar Conventions in this field with a view to developing advanced modern standards. The status of Convention No. 121 was confirmed by the Ventejol Working Parties of 1979 and 1987, which both classified it in the category of Conventions to be promoted on a priority basis. The calls for revision of the list of occupational diseases noted above do not seem to affect the main part of Convention No. 121. Mention has also already been made of the flexibility provisions contained in Convention No. 121, and of the limited recourse member States have had to these provisions. Greater awareness of the possibilities available to adapt the applicability of this Convention to national conditions might enhance its ratification rate. At the same time additional information regarding the reasons for its modest ratification rate seems called for, including on the possible need for a full or partial revision of this Convention, particularly in the light of
the impending review and discussion of the basic social security principles referred to above. (18)

(6) Proposals:

(a) The Working Party might recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 121 (with due consideration to the flexibility provisions it contains) 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 its full or partial revision.
(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 121 in due course.

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II. Employment Policy

13. As noted in the introduction, Convention No. 96 was already examined by the Working Party in November 1996, and it is hereby submitted for re-examination in view of the fact that the International Labour Conference in 1997 adopted the Private Employment Agencies Convention, 1997 (No. 181), which revises Convention No. 96.

II.1 C.96 -- Fee-Charging Employment Agencies Convention (Revised), 1949

(1) Ratifications:

(a) Number of current ratifications: 38.
(b) Latest ratification: Argentina, 1996.
(c) Ratification prospects: Limited. If and when the revising Convention No. 181 enters into force, this Convention will be closed to further ratifications.

(2) Pure denunciations: Four.

<table>
<thead>
<tr>
<th>Country</th>
<th>Ratification</th>
<th>Denunciation</th>
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<tbody>
<tr>
<td>Brazil</td>
<td>1957</td>
<td>1972</td>
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<tr>
<td>Finland</td>
<td>1951</td>
<td>1992</td>
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<td>Germany</td>
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<tr>
<td>Sweden</td>
<td>1950</td>
<td>1992</td>
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(3) **Need for revision:** Convention No. 96 was revised by the adoption of Convention No. 181 at the 85th Session of the International Labour Conference in 1997. The ratification by a member State of the new revising Convention, *ipso jure*, involves the immediate denunciation of Convention No. 96. When Convention No. 181 comes into force, it is thus to be expected that the level of ratification of Convention No. 96 will decline. It is therefore proposed to encourage the ratification of the recently adopted modern standard in this area, Convention No. 181. The Working Party may also wish to re-examine the situation with respect to Convention No. 96, including the possibility of its shelving, at a later stage when its level of ratifications has substantially decreased.

(4) **Proposals:**

(a) The Working Party might recommend to the Governing Body that member States parties to Convention No. 96 contemplate ratifying the Private Employment Agencies Convention, 1997 (No. 181), ratification of which will, *ipso jure*, involve the immediate denunciation of Convention No. 96.

(b) The Working Party (or the LILS Committee) could re-examine the status of Convention No. 96 in due course, including the possibility of shelving, when the ratification level of Convention No. 96 has substantially decreased as a result of ratification of Convention No. 181.

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


**Point for decision:** Paragraph 14.

1. The Working Party has concluded the examination of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

2. Also examined at the 270th Session of the Governing Body. See GB.270/WP/LILS/PRS/2, pp. 7-9.


4. It should be noted, however, that the list of occupational diseases (Schedule I of Convention No. 121)
seems to require a revision. Proposals for new standards in the area of recording and notification of occupational accidents and diseases have been suggested for the International Labour Conferences in 1991, 1996, 1997 and 1998, and a possible revision of Schedule I of Convention No. 121 was proposed for the Conferences in 1993 and 1994. A renewed proposal joining the two issues is being considered by the Governing Body at its present session for possible inclusion in the agenda of the International Labour Conference in 2000.


6. GB.271/4/1, paras. 222-244.

7. As at 1 January 1998: Belgium, Bosnia and Herzegovina, Democratic Republic of the Congo, Croatia, Finland, Germany, Ireland, Luxembourg, The former Yugoslav Republic of Macedonia, Netherlands, Yugoslavia, Senegal and Sweden.

8. As at 1 January 1998, this concerned Belgium, Bolivia, Finland, Germany, Democratic Republic of the Congo, Croatia, Bosnia and Herzegovina, Luxembourg, Netherlands, Yugoslavia, Guinea and Slovenia.

9. See previous footnote. Although The former Yugoslav Republic of Macedonia has also ratified both Conventions, reports under Convention No. 17 are still requested pending receipt of the first report on Convention No. 121.

10. As at 1 January 1998, 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, Democratic Republic of the Congo, Croatia, Finland, Germany, Guinea, Japan, Luxembourg, Slovenia, Yugoslavia, and The former Yugoslav Republic of Macedonia.

11. Although The former Yugoslav Republic of Macedonia has also 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.

12. This applies, *a fortiori*, to the States parties to both Conventions Nos. 18 and 42.

13. See Art. 28(2) of Convention No. 121. The motivations for this Article were left unexplained in the preparatory works of Convention No. 121.

14. 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.
15. 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 August 1948 and is reproduced, as amended, in that 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).

16. See further, footnote 4, supra.

17. See para. 8, supra.

18. See para. 9, supra.