SECOND ITEM ON THE AGENDA

Deferred examination of Conventions Nos. 94 and 96

Introduction

I. Employment services and agencies

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

II. Conditions of work -- Wages

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

Introduction

1. This paper contains a review of the need for revision of two Conventions whose examination was deferred 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. It is submitted for examination by the Working Party at its seventh meeting.
I. Employment services and agencies

2. The Working Party examined the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) for the first time during the 267th Session (November 1996) of the Governing Body. At that time it was noted that the question of a revision of Convention No. 96 was on the agenda of the 85th Session (1997) of the International Labour Conference and it was decided that the status of Convention No. 96 be re-examined at a subsequent meeting of the Working Party in the light of the work at the Conference in 1997.

3. The Working Party carried out a renewed examination of Convention No. 96 at its sixth meeting in March 1998, at which time it was decided to defer the examination of Convention No. 96 to the present meeting.

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

(1) Ratifications:

a. Number of current ratifications: 38.


c. Ratification prospects: Limited. Convention No. 96 will be closed to further ratifications when the revising Private Employment Agencies Convention, 1997 (No. 181) enters into force.

(2) Pure denunciations: 4

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<thead>
<tr>
<th>Ratification</th>
<th>Denunciation</th>
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<tbody>
<tr>
<td>Brazil</td>
<td>1957</td>
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<tr>
<td>Finland</td>
<td>1951</td>
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<td>Germany</td>
<td>1954</td>
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<td>Sweden</td>
<td>1950</td>
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(3) Comments by the Committee of Experts: Comments are pending for 20 member States, including on observations from employers' organizations in Turkey and Mexico and a workers' organization in Spain.

(4) Need for revision: Convention No. 96 was revised by Convention No. 181 adopted at the 85th Session (1997) of the International Labour Conference.

(5) Remarks: As was noted during the work on its revision, Convention No. 96 provides in its Part II for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the...
regulation of other agencies, and in its Part III for the regulation of fee-charging employment agencies. Ratifying parties are required to opt for either Part II or III. The revision of the Convention was motivated by the recognition of the useful contribution of private employment agencies to the functioning of the labour market. The modern standard in this area is now Convention No. 181. Accordingly, the ratification by States parties to Convention No. 96 of Convention No. 181 involves, *ipso jure*, the immediate denunciation of Convention No. 96 when Convention No. 181 enters into force. During the examination of Convention No. 96 by the Working Party in March 1998, it was recalled that in the course of the discussions which led to the adoption of Convention No. 181, some member States had expressed the wish to maintain a public monopoly over employment agencies and that for these member States, Convention No. 96 still retained its usefulness. Against this background, Convention No. 96 should not at this stage be considered for either shelving or possible abrogation. Although Convention No. 96 still retains its validity for a number of countries, the modern standard in this field, Convention No. 181, should nonetheless be promoted. The Working Party may therefore wish to encourage the ratification of Convention No. 181, *as appropriate*, and to re-examine the status of Convention No. 96 at a later stage.

(6) *Proposals:*

The Working Party may wish to recommend to the Governing Body that:

a. the States parties to the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), be invited to contemplate ratifying the Private Employment Agencies Convention, 1997 (No. 181), as appropriate, the ratification of which will, *ipso jure*, involve the immediate denunciation of Convention No. 96, if and when Convention No. 181 shall have come into force;

b. the Working Party (or the Committee on Legal Issues and International Labour Standards) re-examine the status of Convention No. 96 in due course.

II. Conditions of work -- Wages

4. The Working Party initiated the examination of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) at the 267th Session of the Governing Body in November 1996. The Governing Body decided at that time that consultations should be carried out with constituents on their intentions regarding ratification of this Convention, and on the possible obstacles and difficulties encountered, if any, that might prevent or delay its ratification.

5. Consultations were carried out in the course of 1997, and their outcome was examined by the Working Party in March 1998. The Governing Body decided at that time to defer examination of this Convention to the present meeting.

C.94 -- Labour Clauses (Public Contracts) Convention, 1949
(1) Ratifications:

   a. Number of current ratifications: 55.
   c. Ratification prospects: This Convention is likely to receive further ratifications.

(2) Pure denunciation: 1

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<tr>
<th>Ratification</th>
<th>Denunciation</th>
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<tr>
<td>United Kingdom</td>
<td>1950</td>
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**Reasons for denunciation:** In view of the changes that had taken place in economic conditions and in the relations between employers and workers since the Government of the United Kingdom ratified the Convention in 1950, the Government held the view that the provisions of the Convention no longer corresponded to the needs of the United Kingdom.

(3) Comments by the Committee of Experts: Comments are pending for 37 countries, including on observations submitted by workers' organizations in Costa Rica and Turkey.

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

(5) Consultations 1997: In the consultations of 1997, 36 member States responded to the request for information on possible obstacles and difficulties affecting the ratification of this Convention. Seven member States reported that ratification of this Convention was imminent or under serious consideration, while in four others the ratification prospects had to be further examined. Nine member States reported obstacles to ratification due to lack of conformity between the Convention and national legislation, without giving further details.

(6) Remarks: The Ventejol Working Parties of 1979 and 1987 classified Convention No. 94 in the category of instruments to be promoted on a priority basis, as they considered it to be a valid foundation for national action as well as a ratification target. In the recent past, changes in procurement standards for public agencies have raised concerns that this Convention might have lost part of its relevance. During the 1997 consultations, various opinions were expressed by a number of member States on this matter. Several questioned the relevance of this Convention, and one even proposed its abrogation. However, the consultations also revealed a significant trend in favour of its ratification in seven or more countries. In addition, a resolution was adopted at a meeting of experts in March 1996 calling, inter alia, for the encouragement of the ratification of Convention No. 94. The Office is also aware of recent initiatives by the International Federation of Building and Wood Workers in negotiations with the World Bank for the inclusion of a labour clause including Convention No. 94, in World Bank loan agreements. It should be recalled that neither the issue of revision nor of shelving of Convention No. 94 was raised.
by the Working Party. Thus it would seem that the two alternative courses of action for consideration are either to promote the ratification of this Convention or to recommend the maintenance of the status quo, depending on the evaluation made of its current relevance and its possible impact. The Working Party is invited to determine the most appropriate course of action to take.

(7) Proposals:

The Working Party is invited to recommend to the Governing Body:

* either *

- that member States be invited to ratify the Labour Clauses (Public Contracts) Convention, 1949 (No. 94);

* or *

- (a) the maintenance of the status quo with respect to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94); and

(b) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 94 in due course.

* * *

6. On the basis of the case-by-case examination of the Conventions and of the proposals set out above, the Working Party is invited to make recommendations to the Committee on Legal Issues and International Labour Standards.


Point for decision: Paragraph 6.

1. GB.267/LILS/WP/PRS/2, under II.3.

2. GB.271/LILS/WP/PRS/1, under II.1 and GB.271/LILS/5, paras. 30-32.

3. As at 30 September 1998, this Convention had not received any ratifications.

4. It should also be noted that the Netherlands ratified this Convention on 20 May 1952 declaring
acceptance of the provisions of Part II. However, the Netherlands denounced the Convention on 13 February 1992, and on the same date it re-ratified the Convention declaring acceptance of the provisions of Part III.

5. A proposed amendment to qualify Convention No. 96 as "obsolete" in the Preamble was withdrawn as it was noted that some member States which had ratified Convention No. 96 might wish to continue to apply this Convention, International Labour Conference 85th Session (1997), Provisional Record No. 16 (Rev.), p. 7.

6. GB.267/LILS_WP/PRS/2, under III.5.

7. GB.271/LILS_WP/PRS/2, paras. 60-67.

8. GB.271/LILS/5(Rev.1), paras. 55-58.

9. Australia, Austria, Azerbaijan, Belgium, Canada, Chile, China, Colombia, Comoros, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, El Salvador, Estonia, Finland, Germany, Ghana, Hungary, India, Japan, Republic of Korea, Luxembourg, Mexico, New Zealand, Poland, Romania, Singapore, South Africa, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, United Kingdom and United States. It should be recalled that seven of these member States (Austria, Belgium, Cuba, Finland, Ghana, Singapore, Syrian Arab Republic) have ratified Convention No. 96.

10. It should be recalled that following the initial examination in the Working Party in November 1996, constituents were not consulted on the possible need for revision of this Convention. Nonetheless, several constituents commented on this issue. See GB.271/LILS_WP/PRS/2, March 1998, para. 56.


Updated by VC. Approved by RH. Last update: 26 January 2000.

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