

PART THREE

**THE RATIFICATION OUTLOOK AFTER FIFTY YEARS:
SEVENTEEN SELECTED CONVENTIONS**

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INTRODUCTION

BACKGROUND AND SCOPE OF SURVEY

1. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the International Labour Office decided at its 170th Session (Geneva, November 1967) to request governments to report in 1968 on the ratification prospects and difficulties as regards a list of seventeen Conventions chosen among the most important instruments adopted by the ILO Conference over the years. The Governing Body intended these reports to provide the basis for a special review to be undertaken on the occasion of the Organisation's fiftieth anniversary.

2. The Conventions selected for the purpose of this review cover a cross-section of the major subjects dealt with in international labour standards: basic human rights (six Conventions), social policy (one), labour administration (one), employment policy and services (two), wages (three), social security (two), minimum age (one) and maternity protection (one). In making its choice, the Governing Body clearly desired to illustrate the variety of the standards which, with the passage of time, have grown into a comprehensive code specifying the principles, policies, structures, procedures and substantive measures which might underlie or govern national action in the field of social and human rights. As a result the seventeen Conventions are representative of four major areas of ILO concern: the improvement of conditions of work and life, the promotion of full employment, the strengthening of social institutions and the protection of the workers' fundamental rights and freedoms.

3. It is also significant that the instruments reviewed, at the request of the Governing Body, represent the fruit of standard-setting throughout the five decades of the ILO's existence. Three Conventions (Nos. 26, 29, 59) go back to the inter-war period, three others (Nos. 117, 118, 122) were adopted fairly recently and the remainder were framed between 1947 and 1958. The seventeen Conventions thus illustrate not only the variety of the standards which have found their way into the ILO statute book over the years, but also the expanding scope of the resulting Code and the continuity of ILO action in this field. The Committee's findings in regard to seventeen Conventions which involve so many facets of the Organisation's work and span so many years of its activity should therefore throw some light on the degree of effectiveness of these standards and on their continuing impact on the law and practice of the member States.

NATURE OF SURVEY

4. Because of the special character of the present survey, it appears essential to bring out clearly how it differs from the general surveys carried out normally by the Committee. Reports under article 19 of the Constitution are normally designed to reflect the position of the national law and practice in regard to the matters dealt with in a small and unified group of instruments. However, because of the large number of instruments involved in the present case, the Governing Body decided to ask

governments to indicate merely for each of the Conventions concerned (a) the extent to which it is proposed to give effect to the terms of the instrument and (b) any difficulties which prevent or delay ratification. Governments could moreover refer, as appropriate, to information previously supplied to the ILO in a report on an unratified Convention or in connection with the submission of a Convention to the competent authorities (article 19, paragraphs 5 and 7, of the Constitution).

5. Since the initiation of reporting under article 19, twenty years ago, the Committee has increasingly endeavoured to prepare surveys which afford a comprehensive picture of the position existing in both ratifying and non-ratifying States, so as to assess national developments in some detail. This pattern, which the Committee intends to revert to in future surveys concerned with a coherent group of instruments, could of course not be followed this year. Both the large number of instruments involved and the specific questions raised in the form of report make it necessary to focus attention exclusively on the information available from governments in so far as it bears on intended ratifications or describes what obstacles stand in the way of such action. The present survey therefore contains references to national law and practice mainly when they help to illustrate doubts or difficulties mentioned by governments in connection with the formal acceptance of the provisions of a given Convention.

6. The Committee considered, moreover, that the basic purpose underlying the Governing Body's request for special article 19 reports on a whole series of key Conventions would best be served by providing as clear and concise a picture of the position as possible. It hopes that in this way the task of the International Labour Conference in assessing the prospects for future action will be facilitated. The authoritative and up-to-date information received would thus enable the ILO, as it enters the second half-century of its existence, not only to learn of the studies and plans for further ratifications existing in the various member countries but also to have available, for each of the Conventions and groups of Conventions involved, an over-all view of the problems encountered and of the possibilities which exist for overcoming them.

INFORMATION AVAILABLE

7. As indicated above, governments were requested to provide information on two specific and inter-related points: to what extent they intended to implement a given Convention and what difficulties stood in the way of its ratification. The present survey is essentially based on the governments' replies to these two questions. As the value of the survey closely depends on its actuality, an effort has been made to include the most recent data thus available: in the great majority of cases these appeared in the reports themselves; in other cases the governments took advantage of the possibility, afforded by the form of report, to refer to information previously supplied in an article 19 report or in connection with the submission of a Convention to the competent national authorities; in yet other cases the Committee took into account information previously supplied in pursuance of article 19, no article 19 report having been received for the current period.

8. In order, moreover, to give this survey the most comprehensive scope possible, the Committee has also drawn on certain other types of official information, in so far as it deals specifically with ratification prospects, and was received from governments either in formal written communications to the ILO or in oral statements made during the International Labour Conference and reflected in the *Record of Proceedings*. Similarly, authoritative replies or pronouncements have also on occasion

been made by governments within the framework of other international organisations, such as the Council of Europe, when measures taken by their member States to ratify additional ILO Conventions were under examination. Unless the information used by the Committee is drawn directly from the current article 19 reports, the survey indicates in a footnote the source on which its findings are based.

9. Up to the time of meeting of the Committee ninety-five States Members had communicated reports on all or some of the Conventions for which information was requested. Full indications of the reports due and supplied by each country will be found in the detailed table appended to the survey.

10. Although the Governing Body's request concerned the ratification of Conventions by member States, two Governments (Australia, United Kingdom) included in their reports information on the effect given to unratified Conventions in certain non-metropolitan territories. The survey also takes account of this information.

ARRANGEMENT OF THE SURVEY

11. The present survey is arranged Convention by Convention and follows the order adopted by the Governing Body in the list of Conventions appended to the form of report. The survey is therefore divided into eight chapters each dealing with one of the broad subjects included in the list.

12. Within each chapter the various instruments are reviewed in the following manner: after a brief summary of the instrument and a reference to the ratifications it has secured thus far, the main obstacles to implementation mentioned by governments are analysed, together with any pertinent indications¹ which might contribute to a solution of these difficulties; the chapter then indicates the measures taken or envisaged by governments in order to give fuller effect to a Convention and concludes with a survey of ratification prospects.²

¹ When reference is made in this connection to previous reports of the Committee of Experts—*Report III (Part 4)* as submitted to the various sessions of the International Labour Conference—the abbreviation “RCE” is used, together with the year of the session; when these references concern the Committee's comprehensive surveys of the position in both ratifying and non-ratifying countries, the footnote indicates “general survey” as well as the relevant paragraphs thereof.

² In those cases where the government refers at the same time to measures to implement and to measures to ratify a Convention, these are dealt with jointly in the section on ratification prospects.

CHAPTER I

BASIC HUMAN RIGHTS

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87)

13. The Convention provides that workers and employers without distinction whatsoever¹ shall have the right to establish and join organisations of their own choosing for the purpose of furthering and defending their respective interests; these organisations in turn shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, free from any interference by the public authorities which would restrict this right or impede the lawful exercise thereof. Organisations shall not be liable to be dissolved or suspended by administrative authority. They may establish and join federations or confederations, which shall have the same rights and guarantees as those laid down in the Convention for primary organisations. The right of international affiliation of primary organisations, federations and confederations is also recognised.

14. In exercising the rights laid down in the Convention, workers and employers and their respective organisations are required, like other persons or organised collectivities, to respect the law of the land, which shall not, however, be such as to impair, nor shall it be applied so as to impair, the guarantees provided for in the Convention. In particular, the acquisition of legal personality by unions shall not be made subject to conditions of such a character as to restrict the application of the rights laid down in the Convention.

15. Finally, ratifying States undertake to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

16. The Convention has thus far been ratified by 76 countries.² A total of 33 reports have been supplied by non-ratifying States.

Difficulties Encountered

17. Among the difficulties preventing the ratification of the Convention, three countries refer, in a general manner, to their present stage of development, either

¹ With regard to the armed forces and the police, however, national laws or regulations shall determine the extent to which the guarantees provided for in the Convention shall apply.

² Albania, Algeria, Argentina, Austria, Barbados, Belgium, Bolivia, Bulgaria, Burma, Byelorussia, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Republic of Guinea, Guyana, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Lesotho, Liberia, Luxembourg, Malagasy Republic, Republic of Mali, Malta, Islamic Republic of Mauritania, Mexico, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Rumania, Senegal, Sierra Leone, Sweden, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Ukraine, USSR, United Arab Republic, United Kingdom, Upper Volta, Uruguay, Yugoslavia.

social, economic or political, and indicate that against this background the ratification of the Convention is not envisaged.¹

18. Three governments indicate, as obstacles to ratification, the existence of limitations on the rights of workers freely to establish and join organisations of their own choosing. Thus, in one country there is a prohibition on the existence of two or more primary trade unions in the same undertaking²; in another there is a system of compulsory unionism, which places some restraint on the formation of new unions where there already exists a union covering a particular field.³ A third government indicates that works unions may be dissolved by administrative authority if less than 25 workers are employed for six months or more in the undertaking on which the union is based⁴; this may be considered as constituting, in effect, a restriction on the existence of unions in small undertakings. In this respect, the Committee considers that a distinction must be drawn between the prohibition of the right to organise for workers employed in small undertakings and a legal minimum membership required for the establishment of a trade union. The Committee has accepted, as not being contrary to the Convention, provisions fixing a minimum membership, provided that the figure is not so high as to constitute an obstacle to the establishment of workers' organisations. In this connection, it has considered that a requirement of 50 workers might hinder the establishment of trade unions.⁵ On the other hand, if the legal minimum prescribed by the law is too high for the formation of a union within a small undertaking, it should be possible for the workers concerned to associate with other workers to establish a trade union.

19. Three governments refer to possible difficulties of ratification arising from conditions attaching to the registration of unions or to the acquisition by unions of legal personality. Thus, in one country the obligations to be fulfilled for the acquisition of legal personality by a trade union include the holding of a constitutive assembly attended by a fixed number of persons and presided over by a labour inspector, at which a provisional managing committee is elected, and the submission of its constitution to the Public Registry.⁶ Two governments refer to the obligation for unions to be registered.⁷ Another government indicates that there are doubts whether or not the requirements in national legislation relating to the registration of trade unions could be considered as "previous authorisation" for the establishment of trade unions.⁸ In this connection, it should be recalled, as the Committee has previously pointed out⁹, that the compulsory or optional nature of the formalities prescribed by law for a union's registration or acquisition of legal personality does not always provide a sufficient criterion for determining whether or not this amounts to a requirement of previous authorisation. In fact, in some cases, although registration is compulsory, the authority competent to effect the registration does not have power to refuse it or, which amounts to the same thing, can refuse registration only because of a formal defect which it is always possible to remedy; moreover, where refusal is possible, it may be appealed against to the courts.

¹ Kenya, Singapore, Tanzania.

² Colombia.

³ New Zealand.

⁴ Chile.

⁵ RCE, 1963, p. 103.

⁶ Chile.

⁷ Australia, Malaysia.

⁸ Venezuela.

⁹ RCE, 1959, General Survey, para. 27.

20. Two governments mention as difficulties to ratification limitations on the right of unions to organise their administration and activities and to formulate their programmes, or the possibility of interference by the public authorities which would restrict this right. In one case, certain restrictions, such as a reduction in the number of outsiders on the executives of trade unions, the prescription of a minimum membership fee and provision for statutory inspection of unions, had been agreed to by the workers' representatives of different shades of opinion and had not been objected to by any of the important workers' organisations; the aim of these restrictions, according to the government, is the strengthening of the trade union movement.¹ In another country the legislation renders unions liable to inspection and investigation.²

21. In the same connection, trade unions in one country are prohibited from engaging in commercial or political activities.³ With regard to the prohibition of commercial activities, it should be pointed out that the Convention defines an "organisation", for the purposes of the Convention, as being an "organisation of workers or of employers for furthering and defending the interests of workers or of employers"; for this reason, provisions which forbid unions to engage in commercial activities have not in the past given rise to comments on the part of the Committee.

22. The problem of provisions establishing a prohibition of political activities is more complex. The Committee considers that any general prohibition of such action would be contrary to the Convention.³

23. A difficulty referred to by one government is that its legislation provides that no person responsible for the administration and management of a trade union shall be a non-national.⁴ The Committee has pointed out in the past⁵ that the problem raised by provisions prohibiting the election to union office of non-nationals is fairly complex. It may be admitted that, as a general rule, a provision of this kind cannot give rise to difficulty. The Committee has, however, expressed the opinion⁶ that everything depends on the background against which such a provision is applied, since in given circumstances it is possible that a provision to this effect might, in practice, lead to a denial to certain categories of workers of the right freely to elect their representatives. Similarly, a prohibition on the employment by trade unions of non-nationals to handle their administration, act as advisers, etc., would have to be viewed in the light of the circumstances in each case.

24. A not dissimilar difficulty referred to by two countries⁷ is that, under national legislation, a given proportion of the officers of a union must be persons actually engaged or employed in an industry or occupation with which the union is connected. A distinction should be drawn, in this connection, between provisions stipulating that all trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, and those which require only a given proportion of leaders or officials to belong to the occupation in question. As the

¹ India.

² Turkey.

³ In this connection reference may also be made to the resolution concerning the independence of the trade union movement, adopted by the International Labour Conference at its 35th Session (Geneva, 1952) (*Record of Proceedings*, 35th Session, 1952, p. 451).

⁴ Congo (Kinshasa).

⁵ See, for example, RCE, 1959, General Survey, para. 59.

⁶ Ibid.

⁷ India, Malaysia.

Committee indicated in a previous report ¹, it would seem that when provisions in national legislation provide that all the trade union leaders shall belong to the occupations in respect of which the organisation carries on its activities the guarantees laid down in the Convention may be impaired. The Committee has in particular stressed the danger that the dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer.¹

25. In certain countries trade unions may be suspended ² or dissolved ³ by administrative authority. With regard to the legal provisions referred to in this connection, it would seem appropriate to point out that where, following the suspension or dissolution of an organisation by an administrative authority, a right of appeal exists to a judicial body or the decision to suspend or dissolve the organisation has to be confirmed by such a body, the suspension or dissolution may be considered as not being contrary to the Convention, provided that, pending the appeal to or confirmation by the judicial body, the union is free to function normally.⁴

26. Certain governments have referred to problems arising from the federation, either national or international, of trade unions. Thus, in one country the activities of confederations of workers' unions are limited to education, relief, provident institutions and the establishment of canteens and co-operative societies.⁵ In two other countries there are restrictions on the links between national trade unions and international organisations.⁶

27. The difficulty to ratification mentioned, perhaps, most frequently by governments relates to the trade union rights of public officials. In two countries these persons do not have the right to form a union or to belong to any union.⁷ In three other countries there are restrictions on the rights of some or all of these workers to establish and join organisations of their own choosing without previous authorisation.⁸ Two countries indicate additionally that organisations of civil servants do not have the right to affiliate with federations or confederations of their choice.⁹

28. This question is linked with the issue of the right to strike of civil servants, which has been specifically referred to by three countries.¹⁰ While the Governing Body

¹ RCE, 1959, General Survey, para. 61.

² Colombia, Switzerland.

³ Chile, Colombia, Malaysia (where the legislation permits, in certain circumstances, the cancellation of the registration of a trade union; this is, in effect, equivalent to dissolution), Venezuela.

⁴ However, if legislation under which an organisation may be suspended or dissolved is such as to impair, or may be applied so as to impair, the guarantees provided for in the Convention, then, even if the suspension or dissolution of the union is decided upon by a judicial body, the provisions of the Convention would be infringed.

⁵ Chile.

⁶ Malawi (where the Registrar of Trade Unions can control the activities of trade unions in their relationships with organisations outside Malawi); Malaysia (where the approval of the competent minister is required for the payment of affiliation fees to international organisations of workers and employers).

⁷ Chile (where workers in public undertakings are in the same position); Venezuela.

⁸ Ceylon, India, Uganda.

⁹ Ceylon, India.

¹⁰ India, Switzerland, Uganda.

Committee on Freedom of Association has pointed out on many occasions that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised, it has considered that it may be acceptable for strikes to be prohibited or subject to certain restrictions in the civil service. In this connection, however, it has stressed the importance which it attaches, where strikes are prohibited or subject to restrictions in the civil service, to the establishment of adequate safeguards to protect the interests of the workers who are thus deprived of an essential means of defending their occupational interests; it has pointed out that such restrictions should be accompanied by adequate, impartial and speedy conciliation or arbitration procedures in which the parties concerned may participate at every stage, and that the awards given should in all cases be binding on both parties.¹

29. One government refers to a further difficulty to ratification with regard to public officials, namely that trade unions of civil servants may not engage in activities of a political nature.² The Committee has previously referred to provisions prohibiting trade unions from engaging in political activities³, without, however, referring to the rather special case of such a prohibition for civil service trade unions. While reaffirming its general attitude to prohibitions on political activities, referred to above, the Committee considers it pertinent to recall that general prohibitions of political activities in the case of civil servants' unions have not, in the past, given rise to comments on its part in its examination of reports under article 22 of the Constitution of the ILO.

30. Two governments indicate the existence of general provisions amounting to requirements that trade unions respect national law. Thus, in one country, organisations having an illegal purpose or employing illegal methods are forbidden.⁴ In another country unions may not affiliate with international workers' or employers' organisations which engage in activities which are not in conformity with the principles of national constitutional law.⁵ It is appropriate to point out in this respect that Article 8 of the Convention provides that in exercising the rights laid down in the Convention, workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land, but that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention.

31. Finally, one government wonders whether the Convention leaves governments the right to restrict freedom of association in time of war or other exceptional events.⁶ While the Convention is silent on possible restrictions on trade union rights in such circumstances, it is pertinent to recall that the Governing Body Committee on Freedom of Association has, in various cases⁷, recognised the possibility of imposing some restrictions on trade union action during emergencies; these restrictions, however, have related to certain kinds of activities of trade unions (for example meetings and strikes) and have not affected the right to form and join trade unions.

¹ See, for example, para. 531 of the 101st Report of the Committee (*Official Bulletin* (Geneva, ILO), Vol. LI, No. 1, Jan. 1968, Supplement).

² India.

³ For example, RCE, 1959, General Survey, para. 69; and see para. 22 above.

⁴ Switzerland.

⁵ Turkey.

⁶ Switzerland.

⁷ See, for example, the 25th Report of the Committee, para. 165 (*Official Bulletin*, Vol. XL, No. 2, 1957); 78th Report, paras. 82 to 84, and para. 277 (*ibid.*, Vol. XLVIII, No. 1, Jan. 1965, Supplement).

Measures Taken or Envisaged

32. Certain governments have supplied information concerning measures taken in the field covered by the Convention or studies relating thereto. Thus, in Canada, a study has recently been made of the Convention and the degree to which Canadian law and practice now appear to conform to the Convention; formal consultation is now in progress between the Government and the provincial governments. In Chile a Bill to bring national legislation into conformity with the Convention was submitted to the National Congress in 1965 and is at present before that body. The Government of Uganda states that it is its policy to work towards establishing conditions in the country which will permit further legislation conforming fully with the provisions of the Convention. Lastly, in Venezuela the Government is preparing a Bill to eliminate all of the present divergences with the Convention, except with regard to the position of public servants; for this reason, ratification of the Convention will not be possible.

Ratification Prospects

33. Certain governments have supplied information relating to the possible ratification of the Convention. In Haiti the Convention was ratified by a decree of 7 February 1963, but the instrument of ratification has not yet been received by the Office. The Convention was submitted to the Senate of the United States in 1949 with a request for advice and consent to ratification. In Iran the legislation is stated to be in conformity with the Convention, which was submitted to Parliament in 1951 with a view to its ratification. In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968.

34. The Convention is at present before the Government of Morocco with a view to the normal procedure for ratification being set in motion. The Government of Rwanda indicates that there is no major difficulty preventing ratification, but the Convention has still to be submitted to the competent authority. Consideration is being given by the Governments of Afghanistan and Australia¹ to the question whether the Convention can be ratified.

35. On the other hand, the Government of Ceylon indicates that the ratification of the Convention is not possible until decisions are taken by it on recommendations made by the Commission of Inquiry appointed to recommend amendments to certain legislation and by the Committee of Inquiry appointed to report on the law and practice relating to trade unions; the Government has previously stated² that these two bodies would consider the Convention. The Government of Spain states that the consideration of the Convention with a view to its ratification has been postponed because of the impending legislation to develop the trade union organisation.

36. Finally, certain governments which state that they cannot at present ratify the Convention indicate that it may, nevertheless, have some influence in the future. Thus, in Congo (Kinshasa), although the Government considers itself unable to ratify the Convention at present, it hopes to do so as soon as possible. In Tanzania the position will be kept under constant review.

37. In conclusion, it appears from the information available at present that ratification of the Convention has been approved by the competent authorities in one

¹ Article 19 report, 1959.

² Letter of 21 March 1967 from the Ministry of Defence and External Affairs.

country, that the Convention has been submitted for approval to the competent authorities in two countries, that its ratification is being preparing in two countries and being considered in two others; the government of one country states that no difficulties prevent ratification.

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98)

38. The Convention provides for the adequate protection of workers against acts of anti-union discrimination in respect of their employment, particularly against acts calculated to cause them prejudice, in engagement, dismissal or otherwise, on the ground of their trade union membership or activities. Protection is also prescribed for workers' and employers' organisations against acts of interference by each other or each other's agents or members in their establishment, functioning or administration, and in particular against those aimed at promoting the domination or control of workers' organisations by employers or employers' organisations. The Convention provides that machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the Convention. It also provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary collective bargaining, with a view to the regulation of terms and conditions of employment by means of collective agreements.

39. Finally, it is provided that national laws or regulations shall determine the extent to which the guarantees provided for in the Convention apply to the armed forces and to the police, and that the Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status.

40. The Convention has thus far been ratified by 86 countries.¹ A total of 21 reports have been received from non-ratifying States.

Difficulties Encountered

41. Two countries refer, in a general way, to difficulties related to the present level of trade union development. Thus, one government indicates that, while its legislation is in conformity with the Convention, no employers' or workers' organisations have yet been established; it is not yet known how they will operate or whether there will be any outside influence on their freedom of action.² Another government also considers that there are no legal difficulties to ratification, but is of the opinion that ratification should be delayed until such time as workers'

¹ Albania, Algeria, Argentina, Austria, Barbados, Belgium, Brazil, Bulgaria, Byelorussia, Cameroon, Central African Republic, Chad, China, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Republic of Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Lesotho, Liberia, Libya, Luxembourg, Malagasy Republic, Malaysia, Republic of Mali, Malta, Morocco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Rumania, Senegal, Sierra Leone, Singapore, Sudan, Sweden, Syrian Arab Republic, Tanzania, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, USSR, United Arab Republic, United Kingdom, Upper Volta, Uruguay, Venezuela, Viet-Nam, Yugoslavia.

² Rwanda.

organisations have reached a reasonable stage of maturity and responsibility and are representative of a large working population.¹

42. One government indicates that under national legislation an employer has complete freedom to employ—or not to employ—persons at will; in addition, he may dismiss a worker, provided that he observes the periods of notice prescribed, without giving a reason, which would permit him to dismiss a worker by reason of his trade union activities.² The government is inclined to the opinion that this system of freedom of contract is not compatible with the provisions of the Convention which lay down that the protection to be granted to workers shall apply in particular in respect of acts calculated, firstly, to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, and, secondly, to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.

43. The Committee has previously had occasion to refer to this particular difficulty.³ Basically, the Committee has considered that as long as the protection laid down in the Convention is effectively enjoyed, the methods to apply these provisions of the Convention may vary. As it has pointed out⁴, the methods employed in different countries will probably depend on the juridical techniques normally utilised for regulating conditions of employment and, especially, contracts of employment, that is, as a general rule, either intervention of the State through laws or regulations, on the one hand, or predominance of collective agreements, on the other. In the same connection, it should be recalled that Article 3 of the Convention lays down that, where necessary, machinery *appropriate to national conditions* shall be established for the purpose of ensuring respect for the right to organise as defined in the Convention. In addition, as the Committee has previously indicated⁵, in deciding upon the methods to be used to give effective application to these provisions of the Convention, governments will normally take into account such factors as the historical background of trade union development in their respective countries, the present strength of the trade union organisations and the experience of their leaders. The Committee wishes to stress, however, that, if in a country for which the Convention is in force workers were not adequately protected in respect of acts of anti-union discrimination, then, whatever methods were normally employed in the country to regulate conditions of employment, the government in question should, in order fully to implement the provisions of the Convention, take such measures as might be necessary to ensure the effective enjoyment of the protection prescribed in the Convention.

44. One government indicates that under its legislation unions have the right to request and obtain from the employer the dismissal from employment of any of its members who resign or are expelled from the union, provided that the relevant contract contains the clause excluding non-union members.⁶ The government considers that this provision might be incompatible with the provision of the Convention according workers protection in respect of acts calculated to cause the dismissal of a worker by reason of union membership or because of participation in

¹ Zambia.

² Switzerland.

³ See, in particular, RCE, 1959, General Survey, para. 45.

⁴ Ibid., para. 46.

⁵ Ibid.

⁶ Mexico.

union activities. In this connection, the Committee wishes to refer to the report of the Committee on Industrial Relations at the 32nd Session of the International Labour Conference, which indicates that, after examining various formulae to cover the case of union security arrangements under the Convention, the Committee in question "finally agreed to express in the report its view that the Convention could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice".¹

45. One government indicates, as a difficulty to the ratification of the Convention, that civil servants, that is "those connected with the secretarial and executive functions of government", are not in the same position as other workers with regard to the guarantees laid down in the Convention.² It wonders whether the term "public servants engaged in the administration of the State", whose position is not dealt with by the Convention, covers all civil servants, including clerks, etc. The Committee has considered, in this connection³, that while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of public servants who do not act as agents of the public authority (even though they may be given a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, therefore, would appear to be, basically, between civil servants employed in various capacities in government ministries or comparable bodies, that is, public servants who, by their functions are directly engaged in the administration of the State as well as lower-ranking officials who act as supporting elements in these activities, on the one hand, and other persons employed by the government, by public undertakings or by autonomous public institutions, on the other hand.

46. A difficulty to the ratification of the Convention referred to by one government is that under national legislation members of the armed forces and the police are absolutely prohibited from organising trade unions.⁴ In this connection, the Committee recalls that, as laid down in Article 5 of the Convention, the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. States ratifying the Convention, therefore, are free to decide the extent to which the right to organise shall apply to these persons, and, if it appears to them desirable, completely to exclude these persons from the protection laid down in the Convention.

47. Finally, two governments, while seeing no major difficulty in ratifying the Convention, consider that it would be inappropriate to ratify it without ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).⁵ In this connection, the Committee considers that, while Convention No. 98, which deals with the detailed application of the right to organise and with the right to bargain collectively, assumes that the basic right to establish unions, which is laid down in Convention No. 87, is granted in the country concerned, the two instruments are independent, and there would not moreover be any logical inconsistency for a State to ratify Convention No. 98, if it were prevented from

¹ ILO: *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949 (Geneva, ILO, 1951), p. 468.

² India.

³ See RCE, 1967, pp. 100-101.

⁴ Ceylon.

⁵ India, New Zealand.

ratifying Convention No. 87 by reason of difficulties unconnected with the rights dealt with in Convention No. 98. In fact, Convention No. 98 has been ratified by 17 States which are not bound by Convention No. 87.

Measures Taken or Envisaged

48. Certain governments have supplied information concerning measures envisaged in the field covered by the Convention, or studies relating thereto. Thus, in Canada a study has recently been made of the Convention and of the degree to which Canadian law and practice appear now to conform to the Convention. The study shows that Canadian law appears to comply in most respects with the Convention, and it is contemplated that discussions of this subject will take place with provincial governments at a later date in the light of the federal-provincial discussions on Convention No. 87. The Government of Chile indicates that it intends to amend its legislation in order to make the provisions of the Convention fully applicable. In Kuwait the provisions of the Convention will be tackled in any future legislative amendment.

Ratification Prospects

49. Certain governments have supplied information on the possible ratification of the Convention. In Colombia the Convention was submitted to the National Congress for its approval in September 1965 and is at present before that body. In Iran the Convention was submitted to Parliament in 1951 with a view to ratification. In Congo (Brazzaville) arrangements were being made with a view to the ratification of the Convention in the near future.¹ The Government of Congo (Kinshasa) indicates that the ratification of the Convention is being prepared. In Australia ratification is being closely examined. In the Netherlands an amendment to the Civil Code which would permit the ratification of the Convention is being prepared; the parliamentary procedure for ratification was expected to begin shortly. In Ceylon the present position of the law is being examined by a Commission of Inquiry and the ratification of the Convention has to await the recommendations of this body. The Government of Spain refers to the information it supplied in respect of Convention No. 87 concerning the postponement of a decision on ratification.²

50. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in two countries and that its ratification is being prepared in four other countries.

FORCED LABOUR CONVENTION, 1930 (No. 29)

51. The basic undertaking entered into by States which ratify the Convention is to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to specific conditions and guarantees laid down in the Convention. The Convention contains a general definition of forced or compulsory labour, but provides that, for the purposes of the Convention, five kinds of work or service shall be excluded from this definition: compulsory military service, certain civic obligations, certain forms of penal labour, work exacted in emergencies and minor communal services.

¹ Letter of 22 February 1967 from the Ministry of Labour.

² See under Convention No. 87.

52. The Convention has thus far been ratified by 103 countries.¹ A total of 13 reports have been supplied by non-ratifying States.

Difficulties Encountered

53. One government indicates that it is unable to ratify the Convention since national legislation, in order to avoid overburdening the courts, provides that tax defaulters may be ordered to perform public work by administrative officials.²

Measures Taken or Envisaged

54. Measures are envisaged in one country to give further effect to the Convention. In China revision of the existing Labour Service Act and its enforcement measures is under consideration.

Ratification Prospects

55. The Convention has been ratified by four more countries since the general survey of forced labour made by the Committee in 1968.³

56. The Government of Turkey states that work relating to ratification is now in progress. The Government of Uruguay indicates that it intends to initiate action with a view to ratification, while the Government of Ethiopia states that ratification will be considered after certain legislative modifications have been made.

57. According to the Governments of Afghanistan⁴, Canada, Nepal⁴, the Philippines and Rwanda, forced or compulsory labour does not exist or is prohibited in their countries. The Governments of Bolivia and Guatemala indicate that as forced labour does not exist in their countries and national legislation goes beyond the Convention, ratification of the Convention is not envisaged, the Government of Guatemala adding that the ratification of Convention No. 105 has made unnecessary ratification of Convention No. 29. In this connection the Committee observes, first, that as the stated objective of the Convention is the abolition of forced or compulsory labour in all its forms, its ratification in no way presupposes that a ratifying State would have recourse to forced or compulsory labour during a transitional period. Secondly, the Committee draws attention to article 19, paragraph 8 of the Constitution of the ILO, according to which "In no case shall . . . the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers

¹ Albania, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Burma, Burundi, Byelorussia, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Republic of Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lesotho, Liberia, Libya, Luxembourg, Malagasy Republic, Malaysia, Republic of Mali, Malta, Islamic Republic of Mauritania, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Rumania, Senegal, Sierra Leone, Singapore, Somali Republic, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, USSR, United Arab Republic, United Kingdom, Upper Volta, Venezuela, Viet-Nam, Yugoslavia, Zambia.

² Malawi.

³ Cambodia, Colombia, Kuwait, Thailand.

⁴ Article 19 report, 1968.

concerned than those provided for in the Convention . . .". Thirdly, with regard to the relationship between the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, the Committee calls attention to its general survey of forced labour of 1968, where it was indicated that these two Conventions are independent instruments whose scope is not wholly coterminous.¹

58. In conclusion, it appears from the information available at present that ratification of the Convention is being prepared in one country and is contemplated in another.

ABOLITION OF FORCED LABOUR CONVENTION, 1957 (No. 105)

59. The Convention requires the abolition of the use of any form of forced or compulsory labour in five specified cases, namely (a) "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system"; (b) "as a method of mobilising and using labour for purposes of economic development"; (c) "as a means of labour discipline"; (d) "as a punishment for having participated in strikes"; and (e) "as a means of racial, social, national or religious discrimination".

60. The Convention has thus far been ratified by 83 countries.² A total of 25 reports have been supplied by non-ratifying States.

Difficulties Encountered

61. Several countries cite difficulties preventing ratification of the Convention. Two governments indicate that they still entertain uncertainty as to the precise meaning of the term "forced or compulsory labour" in the Convention.³ In this connection the Committee calls attention to the explanations provided in its general survey of forced labour in 1968.⁴

62. For several other governments the main difficulty would appear to arise from the prohibition of the use of forced or compulsory labour for purposes of economic development contained in Article 1 (b) of the Convention.⁵ The Committee observes, however, that the countries in question have ratified the Forced Labour Convention, 1930, and have thus already undertaken to suppress the use of forced or compulsory labour in all its forms within the shortest possible time, subject to certain exceptions provided for in that Convention, for example, compulsory labour in cases of emergency and as minor communal services. In this connection the Committee recalls

¹ RCE, 1968, General Survey, paras. 41-44, 81-85. As regards the position of two members of the Committee, see also paras. 17 and 18 of this Survey.

² Afghanistan, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Burundi, Cameroon (Western Cameroon), Canada, Central African Republic, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Republic of Guinea, Guyana, Haiti, Honduras, Iceland, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Jordan, Kenya, Kuwait, Liberia, Libya, Luxembourg, Malaysia, Republic of Mali, Malta, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Rwanda, Senegal, Sierra Leone, Singapore, Somali Republic, Spain, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Republic, United Kingdom, Uruguay, Venezuela, Zambia.

* Bulgaria and Japan.

⁴ RCE, 1968, General Survey, paras. 41-46, 81-88.

⁵ Congo (Kinshasa), India and Upper Volta (article 19 report, 1968).

the explanations given in its general survey of forced labour in 1968, that compulsory labour exacted in cases of emergency or as minor communal services would not, if remaining within the limits laid down in the 1930 Convention, constitute a case of "mobilising and using labour for purposes of economic development" within the meaning of the Abolition of Forced Labour Convention, 1957.¹ One government refers, apparently also in relation to Article 1 (b) of the Convention, to legislative provisions, deemed necessary to relieve the burden on the courts, under which administrative officials may order tax defaulters to perform public work.²

63. Several countries mention difficulties arising from the fact that national legislation permits the imposition of compulsory labour on persons in circumstances which might fall within Article 1 (a), (c) or (d) of the Convention. Thus, one government refers to legislation, deemed necessary to preserve public order, under which persons may be detained and required to work while under detention.² Another government refers to legislative provisions under which penal labour may be exacted from persons convicted of violation of the prohibition for public employees to engage in political activities or of certain breaches of discipline in various public services and in the merchant marine.³ These questions were considered by the Committee in the survey of forced labour made in 1968, where it sought to indicate the bearing upon them of the 1957 Convention.⁴ Another government refers to the fact that penal labour may be imposed on persons participating in strikes which are illegal under the legislation governing the settlement of industrial disputes⁵; this question was likewise considered by the Committee in its survey of 1968.⁶

64. Convention No. 105 has been ratified by three more States since the general survey of forced labour of 1968.⁷

Measures Taken or Envisaged

65. Several countries indicate that measures are envisaged or have been adopted to give further effect to the Convention. The Government of Ceylon indicates that the Convention will be considered by Commissions of Inquiry set up to deal with questions relating to the Industrial Disputes Act and the Trade Unions Ordinance.⁸ The Government of Viet-Nam indicates that consideration is being given to a proposed amendment to exclude "labour exacted by virtue of tax obligations" from the list of exceptions to the prohibition of forced or compulsory labour contained in the Labour Code. The Governments of Lesotho and Upper Volta⁹ refer to legislative measures adopted with a view to giving effect to the Convention.

Ratification Prospects

66. In Chile the Government has submitted the Convention to Parliament with a view to ratification. In France and Sudan the Convention has been prepared for

¹ RCE, 1968, General Survey, para. 44.

² Malawi.

³ Japan.

⁴ RCE, 1968, General Survey, paras. 93-95, 115, 119-121, 126-127.

⁵ Ceylon.

⁶ RCE, 1968, General Survey, para. 124.

⁷ New Zealand, Paraguay, Uruguay.

⁸ Letter of 21 March 1967 from the Ministry of Defence and External Affairs.

⁹ Article 19 report, 1968.

submission to Parliament for ratification. Ratification is contemplated by the Government of the Congo (Brazzaville).¹ The Governments of Czechoslovakia and Ethiopia state that ratification will be considered after certain legislative modifications have been made. The Government of Rumania indicates that national legislation conforms with the principles of the Convention and that its ratification is envisaged when the revision of the labour legislation has been completed. The Government of the USSR indicates that the competent organs are studying the possibility of ratifying the Convention.² The Governments of Lesotho, Mauritania, Thailand³ and Togo indicate that there are no difficulties preventing ratification or application of the Convention. The Governments of Burma, Byelorussia, Hungary, Nepal³, the Ukraine, the USSR and Yugoslavia state that forced labour does not exist in their countries. The Government of Bolivia states that as no forced labour exists in the country, ratification is not envisaged. In this regard the Committee observes that the non-existence of forced labour would facilitate the ratification of the Convention.

67. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in one country, while in two other countries it has already been prepared for submission, that ratification is contemplated in one country, that it will be considered in three countries after certain modifications to the national legislation have been made; the governments of four countries state that no difficulties prevent ratification.

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (No. 111)

68. Every State that ratifies the Convention undertakes to promote equality of opportunity and treatment with a view to eliminating any discrimination in respect of employment and occupation, through the application of a national policy designed to promote this aim by methods appropriate to national conditions and practice. Under the Convention discrimination consists in any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (or any other grounds determined by the State Member) that has the effect of nullifying or impairing equality of opportunity or treatment in the fields in question. The Convention covers not only access to employment, but also terms and conditions of employment and access to vocational training; it applies to all classes of workers and all kinds of activity.

69. At the time of the present report the Convention had been ratified by 67 countries.⁴ The total number of reports received from countries that have not ratified it is 39.

¹ Letter of 22 February 1967 from the Ministry of Labour.

² Letter of 30 December 1968 from Mr. Goroshkin, member of the Governing Body of the ILO, in reply to the resolution concerning action by the ILO in the field of human rights and in particular with respect to freedom of association, adopted by the June 1968 Conference.

³ Article 19 report, 1968.

⁴ Argentina, Brazil, Bulgaria, Byelorussia, Canada, Central African Republic, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Gabon, Federal Republic of Germany, Ghana, Guatemala, Republic of Guinea, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Ivory Coast, Jordan, Kuwait, Liberia, Libya, Malagasy Republic, Malawi, Republic of Mali, Malta, Islamic Republic of Mauritania, Mexico, Morocco, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Senegal, Sierra Leone, Somali Republic, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukraine, USSR, United Arab Republic, Upper Volta, Viet-Nam, Yugoslavia.

Difficulties Encountered

70. The first group of obstacles mentioned by governments relates to the situation of certain classes of persons under the criteria on which distinctions are based for the purpose of the Convention.

71. Discrimination on grounds of sex creates the difficulty most often mentioned in this connection, which arises in two fields, that of access to employment (and maintenance in employment)¹ and that of terms and conditions of employment or, more precisely, equal remuneration for work of equal value without distinction on grounds of sex.² Most of the countries concerned, however, state that the difficulties are gradually disappearing. It should be recalled here that the Convention does not require that all discriminatory practices should already have disappeared before ratification, but rather that there should be a policy to eliminate them through methods appropriate to national conditions and practice.³ With regard to equal remuneration without distinction based on sex, the Committee has had occasion to point out that Convention No. 111 presents this question (in a different way from Convention No. 100) as one element among others in a general policy intended to cover many aspects of discrimination based on various causes, a fact that allows greater flexibility in timing and choice of means than exists under Convention No. 100.⁴

72. The question of discrimination based on national extraction is raised by one country, in which a waiting period is imposed on naturalised persons before they can have access to public office and certain occupations which the Government considers to be "connected with activities of public interest."⁵ In examining the scope of the provision in the Convention to the effect that distinctions "based on the inherent requirements" of a particular job shall not be deemed to be discrimination (Article 1, paragraph 2), the Committee has observed that the existence of restrictions of this type "may be due to a desire for assurance as to the durability and finality of the person's attachment to his new nationality".⁶ In the case in question, moreover, the Government states that the measure seems to be justified on grounds connected with the abilities and qualifications required for the employments specified.

73. Certain countries also refer in their reports to restrictions applied to foreign workers.⁷ In this connection it must be recalled⁸ that Convention No. 111 applies to discrimination based on "national extraction" and not to that based on nationality; the situation of foreign workers, which it does not cover as such, is covered by other instruments.

74. Other countries have taken measures to ensure an equitable representation of the various groups of the population.⁹ The governments stated in their reports that they do not consider these measures to be discriminatory since they are intended to

¹ Finland, Ireland, Luxembourg, Norfolk Island (Australia).

² Australia, Ceylon, Kenya, Netherlands, New Zealand, United Kingdom.

³ RCE, 1963, General Survey, para. 108.

⁴ Ibid., para. 34.

⁵ France.

⁶ RCE, 1963, General Survey, para. 42.

⁷ Ceylon (which also mentions the question of stateless workers), Congo (Kinshasa), Rwanda, United Kingdom (Bahamas).

⁸ RCE, 1963, General Survey, para. 27.

⁹ Preferences granted to Africans in Tanzania and Uganda, to Malays in Malaysia, or again measures intended to protect the Gibraltarian minority in Gibraltar (article 19 report, 1963).

correct a less favourable economic situation or a lack of balance in the distribution of jobs in the public service. They do consider, however, that these measures prevent their ratifying the Convention. As the Committee has already stated¹, certain arrangements of this kind may not necessarily be regarded as discrimination in the sense of the Convention if their effect is rather to bring about a balance between different communities, to ensure protection for minorities, or again to combat a discrimination to which certain categories have been subjected in practice.² It must, however, be possible in each particular case to assess the actual situation and the application in practice of the relevant provisions.¹ Another country refers to the impediment constituted by the existence of "national policies aimed at fostering national unity", without specifying their nature.³

75. Another group of difficulties mentioned by governments relates to the nature of the legal obligations resulting from the provisions of the Convention.

76. Several countries consider that certain provisions of the Convention might involve an obligation to adopt legislation and direct interference by the State in fields traditionally reserved to negotiation between the parties to industrial relations.⁴ The Committee, however, has already pointed out that the Convention cannot be interpreted either as imposing on the State the obligation to act in certain spheres by methods not appropriate to "national conditions and practice" or as imposing an obligation to adopt legislation in all the spheres in question.⁵

77. One country stresses that action to be taken with a view to giving effect to the Convention depends not only on the federal authorities, but also on the constituent units.⁶ The Committee has already stated, however, that the Convention, by leaving it to the countries to choose methods appropriate to national conditions and practice, has been specially devised so as to impose only obligations that can be carried out without impairing the distribution of powers between a federal State and its constituent units.⁷

78. Lastly, there are cases where the obstacles and delays reported are linked with the general situation of the country. Sometimes there is a delay in considering ratification of the Convention for political⁸, economic⁹, or other reasons.¹⁰

Measures Taken or Envisaged

79. Many countries have issued laws or regulations to promote equality of opportunity and to oppose discrimination appearing in various forms (United States,

¹ RCE, 1963, General Survey, para. 39.

² Ibid., para. 51.

³ Zambia.

⁴ Austria, Jamaica, New Zealand. The United Kingdom mentions the absence of legislation against discrimination on grounds of sex, age, religion, political opinion or social origin.

⁵ RCE, 1963, General Survey, para. 60.

⁶ United States.

⁷ RCE, 1963, General Survey, para. 63.

⁸ Venezuela (elections and the volume of parliamentary business).

⁹ Bolivia.

¹⁰ Austria (legislation in course of being codified).

for example ¹), or in particular spheres: equal pay for work of equal value without distinction of sex (United States, Jamaica), racial discrimination (United Kingdom ²).

80. Special bodies responsible for devising and applying the policy for the promotion of equal opportunity and the elimination of discrimination have been set up in the United States ³ and Japan ⁴: the setting up of similar bodies is provided for in the United Kingdom by the Race Relations Act, 1968. Certain countries such as Malaysia, the United Kingdom and the United States have taken positive measures to institute educational work: education or information of employers and, more generally, of all persons concerned, through the Ministry of Labour, the public employment or placement services or other services dealing with social questions.

81. The employment services provide a means used by certain governments of eliminating discrimination in placement operations. Sometimes there are clauses against discrimination in the texts governing the operation of these services. The policy or practice followed, however, often consists in putting the placement and employment services at the disposal of all without discrimination, and in particular without racial discrimination (New Zealand), or again as in Japan, the United Kingdom or the United States, in bringing employers to base their offers of employment and their corresponding decisions solely on qualifications and merit. In the United States one of the tasks of the employment service is to help minority groups to enjoy equal opportunities.

82. In the field of vocational guidance and training, certain laws or regulations also contain anti-discrimination clauses. Examples can be found in Japan ⁵ and the United States.⁶ Equality of opportunity in this field may also be ensured in practice by a general policy opening access to education and training to all without distinction (Colombia, France, Japan, Thailand ⁷), or again by special programmes for the protection or assistance of certain groups (New Zealand ⁸, United Kingdom ⁹).

83. Lastly, several countries state that they have tried to act in co-operation with the employers' and workers' organisations, and co-operation with other public or private organisations is also sought in the United Kingdom and the United States.

Ratification Prospects

84. It will first of all be noted with interest that since 1963, when the last survey under article 19 was published on this Convention, 28 new ratifications have been registered.

85. It will also be noted that in Haiti ¹⁰ ratification of the Convention has been approved by the competent authorities in 1963, but not communicated to the ILO. In

¹ Civil Rights Act of 1964, Fair Employment Practice Acts in many states, Age Discrimination in Employment Act of 1967.

² Race Relations Act, 1968.

³ Commission on Civil Rights, Equal Employment Opportunity Commission, bodies responsible for the application of state laws or advisory bodies set up under these laws.

⁴ Council on Integration Measures.

⁵ Employment Security Law.

⁶ Code of Federal Regulations.

⁷ Article 19 report, 1963.

⁸ Programme for the training of the Maoris.

⁹ Programme for the vocational training of women.

¹⁰ Ratification of the Convention has been approved by a decree published in *Le Moniteur*, 24 Jan. 1963, No. 8.

Chile, Uruguay and Venezuela, the Convention has been submitted to the competent authorities with a view to ratification. The Government of Belgium states that a Bill to approve the Convention is at present being drawn up. In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. In Nigeria the procedure for ratification is well advanced.

86. The question of ratification is being examined by the Governments of Afghanistan and Burma. In Peru¹ it was expected that the Convention would be ratified very shortly. The Government of Finland hopes that it, too, will soon be in a position to ratify.

87. The question of ratification will be considered later in Barbados, Bolivia and Congo (Brazzaville).²

88. Lastly, in Greece, the possibility of adapting the legislation to the provisions of the Convention will be considered with a view to ratification, and the Government of Rumania states that the national laws are in conformity with the principles of the Convention and that ratification will be considered when the revision of the labour legislation has been completed.

89. To conclude, the information available at present shows that ratification of the Convention has been approved by the competent authorities in one country, that the Convention has been submitted to the competent authorities for approval in three countries, that ratification is being prepared in four countries, and is under consideration in two others.

EQUAL REMUNERATION CONVENTION, 1951 (No. 100)

90. The Convention lays down as a general principle that each member State that has ratified it shall promote and, in so far as to do so is consistent with the methods in operation for determining rates of remuneration within its country; ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. For the purpose of the Convention, the term "remuneration" includes the basic wage and any additional emoluments in cash and in kind, and the term "equal remuneration" refers to rates of remuneration established without discrimination based on sex. The principle may be applied by national laws or regulations, by any legal wage fixing machinery, by collective agreements or by a combination of these various systems. One of the means advocated by the Convention for facilitating the application of the principle established by it is the objective appraisal of jobs on the basis of the work to be performed. Lastly, the Convention provides that governments shall co-operate with employers' and workers' organisations for the purpose of giving effect to its provisions.

91. The Convention has so far been ratified by 65 countries.³ Forty-one reports have been supplied by States that have not ratified it.

¹ Statement by a Government representative to the Conference Committee on the Application of Conventions and Recommendations, 1968.

² Letter of 22 February 1967 from the Ministry of Labour.

³ Albania, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussia, Central African Republic, Chad, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Finland, France, Gabon, Federal Republic of Germany, Ghana, Guatemala, Republic of Guinea, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Israel, Italy, Ivory Coast, Japan, Jordan, Libya, Luxembourg, Malagasy Republic, Malawi, Republic of Mali, Mexico, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Rumania, Senegal, Sierra Leone, Spain, Sweden, Syrian Arab Republic, Tunisia, Turkey, Ukraine, USSR, United Arab Republic, Yugoslavia.

Difficulties Encountered

92. The difficulty most often mentioned as impeding the ratification of the Convention is that in certain States the government takes no direct part in the fixing of wages in the private sector¹—where they may be fixed by arbitration boards², collective agreements or individual agreement between the employer and the wage earner—and the government does not consider it proper to interfere in these negotiations to impose the principle of equal pay. In these same countries, however, the principle is generally applied already to civil servants or state employees. A report from one of these countries where the principle is applied only in respect of non-manual jobs in the public service and the nationalised undertakings contains the words: “if equal pay for women in the public service could be phased in over seven years, our industrial women deserve no less generous treatment.”³ On the other hand, another country reports that the principle is established by legislation for manual workers, but that for salaried employees it applies at present only to the minimum wage.⁴

93. While the situation as described above may present problems to the governments concerned, it must nevertheless be pointed out that of the five States which referred to the same difficulty during the last general survey carried out in 1956⁵, three have since ratified the Convention.⁶ As long ago as 1956, indeed, the Committee stated: “The government’s obligation to *ensure* implementation of the principle of equal remuneration is limited under Article 2, paragraph 1, of the Convention to those areas where such action is ‘consistent with the methods in operation for determining rates of remuneration’. If, under the existing system, the government remains outside the wage-fixing process, it is free to confine itself, under the same provision of the Convention, to *promoting* the application of the principle.”⁷

94. The absence in their countries of any system of objective job appraisal on the basis of the work to be performed, or the inadequacy of an existing system, has also been reported by several governments as constituting an obstacle to ratification.⁸ It must be recalled, however, that the establishment of such a system is not compulsory, but that the Convention proposes it where it can “assist in giving effect” to the principle of equal remuneration, the governments remaining free to make use of it.

95. Economic grounds are also mentioned as delaying or standing in the way of ratification, whether by industrialised countries where female labour is important⁹ or by developing countries.¹⁰ Two governments in the latter group mention the insignificant number of women wage earners.¹¹

¹ Australia, Cyprus, Ireland, Jamaica, Malta, New Zealand, Singapore, United Kingdom.

² Australia (article 19 report, 1956).

³ United Kingdom.

⁴ Chile.

⁵ Denmark, Norway, Sweden, Switzerland, United Kingdom.

⁶ Denmark, Norway, Sweden.

⁷ RCE, 1956, General Survey, p. 156.

⁸ Ceylon, Cyprus, Malaysia, Venezuela, Zambia.

⁹ Netherlands, United Kingdom.

¹⁰ Kenya, Lesotho, Morocco.

¹¹ Pakistan, Rwanda.

96. One government describes in detail the social and psychological obstacles in the way of ratification: the present stage of development is such that the woman wage earner has appeared only recently and employers still consider her a temporary worker (when she marries, the woman ceases to work) from whom a lower output is sometimes accepted. The application of the principle of equal remuneration would close the labour market to women and so deprive them of all chance of proving that their output could equal that of men.¹ Two other countries have stated that there would be the same risk of unemployment for women if the government tried to impose equality of remuneration², and yet another considers that the application of the principle must be carried out over a period of time in the light of national conditions.³ One government intends to reserve its decision until it is in a position to assess the extent to which such discrimination is still practised locally.⁴

97. The lack of uniformity in the legislation of the constituent states or provinces and the division of responsibility between them and the federal authorities have been mentioned by two federal States as preventing ratification at present.⁵ One country states that "the definition given in the Convention of 'work of equal value' is too vague for ratification" and fears that it would lead to a serious disturbance of the accepted system of determining working conditions.⁶

Measures Taken or Envisaged

98. The Governments of Guyana, Pakistan, Togo and Uganda report that national law or practice is in conformity with the principle laid down by the Convention. In addition, in some countries, legislative or administrative measures have been taken to give fuller effect to the Convention. Thus, in the Congo (Kinshasa) a 1967 ordinance makes the general classification of jobs compulsory, and in Lesotho a 1964 administrative regulation lays down a minimum wage for the lowest grades of manual worker irrespective of sex. In the United States the Equal Pay Act of 1963, which was amended in 1966 to broaden its scope and eliminate certain exemptions, requires the employer to pay equal wages to men and women doing equal work on jobs requiring equal skill, effort and responsibility.

99. Other States (Australia, Malta, New Zealand and Zambia), where the government takes no part in wage fixing, try to influence the bodies responsible for it and so endeavour to promote the application of the principle, though they are unable to ensure it in the immediate future. In Australia certain arbitral tribunals have introduced the equal pay principle and legislation has been adopted in two states to prepare the way for equal pay. Zambia reports that, thanks to a policy of this nature, nearly all recent wage determinations have abolished the differentials based on sex.

100. Lastly, there are countries that fear the economic effects which might result from the general application of the principle of equal remuneration and are instituting it by stages, as authorised by the Convention. In Greece and New Zealand, for example, the gaps between men's and women's wages are being

¹ Cyprus.

² Morocco, Zambia.

³ Malaysia.

⁴ Barbados.

⁵ Canada, United States.

⁶ Jamaica.

gradually reduced on the occasion of wage increases, women's wages receiving greater increases. In Malta parity in the public service will have been achieved in stages by 1971.

Ratification Prospects

101. In Venezuela the Convention was submitted to Congress in 1968 with a view to ratification. In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. In Switzerland ratification of the Convention was proposed to Parliament by the Federal Council in 1960, but although one of the Chambers was in favour of ratification, the other has rejected it. In Nigeria the procedure for ratification has already been set in motion, and in the Congo (Brazzaville) ¹, Iran, Upper Volta and Viet-Nam, law and practice are considered to be in conformity with the Convention and ratification is contemplated in the foreseeable future.

102. Other countries indicate that ratification is being examined (Afghanistan, Burma, Greece, Tanzania) or that it will be possible in the future (Kuwait). The Government of Uruguay states that the text of the Convention is being studied by a working group.

103. The adoption of special measures is considered necessary in some countries before ratification can take place: in Cameroon no further obstacle to ratification will exist after the adoption of the regulations for the application of the Labour Code; in Ethiopia certain administrative adjustments must be made to ensure the application of the Convention; in Morocco the Labour Code, which is at present being drawn up, will contain provisions making ratification possible.

104. To conclude, the information at present available shows that the Convention has been submitted to the competent authorities in one country, that ratification is being prepared in two countries, and that in some eight countries ratification is under consideration.

¹ Letter of 16 February 1967 from the Ministry of Labour and Social Welfare.

CHAPTER II

SOCIAL POLICY

SOCIAL POLICY (BASIC AIMS AND STANDARDS) CONVENTION, 1962 (No. 117)

105. The Convention states as a general principle that all social policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress. It then fixes certain standards that governments must take into account with a view to attaining the aim defined above. Accordingly, the improvement of levels of living must be sought through measures including the introduction of a system for the protection of land tenure for the benefit of those who work the land, through the improvement of living conditions in rural areas in order to avoid congestion in urban areas and through the promotion of town planning in these urban areas. Special protective measures are laid down for migrant workers. The Convention also deals with minimum wage fixing and wage protection. It further provides for the abolition of all discrimination on grounds of race, colour, sex, belief, tribal association or trade union affiliation in all fields of working conditions and welfare. Lastly, it provides for the development to the greatest extent possible of general and technical education and vocational training and lays down that a minimum age for employment and a school-leaving age shall be prescribed.

106. These various provisions have been taken over, with the appropriate modifications, from the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82). As a consequence of the access to independence of many countries to which this Convention applied and in order to meet a wish expressed at the First African Regional Conference of the ILO, the 1947 Convention was revised by the 1962 Convention mainly with the purpose of enabling these independent States to continue applying it and to ratify it.

107. The Convention has so far been ratified by 18 countries.¹ A total of 72 reports has been submitted by countries that have not ratified it.

Difficulties Encountered

108. A number of governments, referring to the origin of the Convention, consider that it is intended essentially for developing countries or countries that have recently achieved independence, and is therefore not adapted to conditions in their own countries.² One government considers that certain provisions of the Convention (for example those dealing with measures for the elimination of chronic indebtedness and some of those concerning migrant workers) do not seem to be adapted to the

¹ Brazil, Central African Republic, China, Congo (Kinshasa), Costa Rica, Ghana, Republic of Guinea, Israel, Italy, Jamaica, Jordan, Kuwait, Malagasy Republic, Niger, Paraguay, Senegal, Syrian Arab Republic, Zambia.

² Australia, Austria, Byelorussia, Colombia, Czechoslovakia, Finland, France, Federal Republic of Germany, Ireland, Japan, Luxembourg, Spain, Switzerland, USSR, United Kingdom.

situation in more advanced countries.¹ Lastly, other governments state that certain provisions of the Convention (for example those concerning migrant workers or the control of the alienation of land and of conditions of ownership) relate to situations that do not exist or do not call for special measures in their countries.² In this connection, it may be worth while to recall that the provisions of the Convention covering certain important sectors of social policy are flexibly drafted and so give each government the opportunity of adapting their application to national conditions. Article 4, for example, sets forth "measures to be considered by the competent authorities" with a view to improving the standards of living of agricultural producers, and decisions in this field have thus to be taken in accordance with the particular needs of the producers in the country in question. Similarly, the adoption of various measures advocated by the Convention on behalf of migrant workers presupposes the actual existence of such workers, and the fixing of minimum wages by regulation is made dependent by Article 10 of the Convention on the absence of adequate arrangements under collective agreements.

109. Certain governments, though they declare their approval of the aims laid down by the Convention, state that existing economic and social conditions make it impossible to give full effect as yet to all its provisions.³ One country states that the fields covered by the Convention have not yet all been the subject of appropriate legislation or regulation.⁴ Other governments point out particular spheres in which difficulties might arise in application. Another country states that there are certain discrepancies between the national legislation and the provisions of the Convention.⁵ The problems referred to by these different countries relate in particular to the requirements of the Convention relating to the improvement of standards of living of agricultural producers⁶, the protection of migrant workers⁷, minimum wage fixing⁸ and wage protection⁹, the development of educational programmes and the fixing of the school-leaving age¹⁰, and the fixing of a minimum age for employment.¹¹ One country also considers that the provisions included in its Constitution to safeguard the position of certain groups of the population are an obstacle to the application of the provisions of the Convention concerning the abolition of discrimination.¹²

110. In view of the points thus raised in the reports, it seems useful to recall that various provisions of the Convention are flexibly drafted, not only leaving governments a certain freedom in choosing the means of ensuring their application but also allowing the gradual achievement of the aims set forth. The Committee pointed out in 1959—in connection with the corresponding provisions of Convention No. 82—that its conclusions concerning the application of certain provisions,

¹ New Zealand.

² Finland, Malta, Singapore, Ukraine.

³ Chad (information on submission, 1966), Ivory Coast, Lesotho, Mauritania (information on submission, 1964), Mexico, Rwanda, Thailand (information on submission, 1962). The special difficulties mentioned by these countries are indicated further on.

⁴ Cameroon.

⁵ Portugal.

⁶ Gabon, Malta, Mexico, Netherlands, Spain.

⁷ Ceylon, India, Rwanda.

⁸ Bulgaria, Denmark, Sweden, Thailand (information on submission, 1962).

⁹ Cyprus (information on submission, 1964), Denmark, Guyana, Malta, Mexico, Sweden.

¹⁰ India, Kenya, Malaysia.

¹¹ India, Kenya.

¹² Malaysia. In this connection, the Committee refers to the relevant comments concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) contained in Ch. I.

including those relating to the improvement of standards of living, the protection of migrant workers and the abolition of discrimination would have to be based mainly on information concerning progress made in pursuing social policy and implementing the measures provided for in the Convention. The Committee also pointed out that the provisions concerning the fixing of a school-leaving age were contained in an article providing for the progressive development of broad systems of education and vocational training and could also be applied gradually both in respect of the geographic scope of compulsory school attendance and in respect of its duration.¹

111. One government states that, although most of the basic aims and standards contained in the Convention have been incorporated in its legislation, it cannot consider ratification because it is at war.²

112. Two federal countries state that the questions dealt with in the Convention are partly within the jurisdiction of the federal authorities and partly within the jurisdiction of the states or provinces.³

Measures Taken or Envisaged

113. In a number of countries legislative or other measures have been adopted or are under consideration to give fuller effect to the Convention. The Government of Chile states that it intends to give legal effect to the provisions of the Convention under its domestic law. In Cyprus the enactment of legislation on compulsory education has removed one of the difficulties in the way of the full application of the Convention.⁴ In Ethiopia the draft Third Five-Year Plan takes into account the principles laid down by the Convention, and the Government hopes that, after the approval of the Plan by the competent authorities, measures will be adopted to give effect to the Convention. In Finland an Act of 1967 has laid down a minimum age for employment of general application. In Greece the Government reports that the Convention is under examination with a view to the adoption of additional measures, regard being had to the need for a gradual adapting of national institutions and law. The Government of Guyana states that it hopes to obtain technical assistance for the working out of legislation giving effect to the provisions of the Convention dealing with the protection of wages. The Government of Kenya states that an Employment Act at present being drafted will make it possible to come nearer the aims of the Convention. In Malta measures have been adopted to amend the law in order to give effect to the provisions of the Convention dealing with the protection of wages. The Government of Thailand⁵ states that it regards the Convention as a guide to the country in the drafting of economic and social plans.

Ratification Prospects

114. The information available shows that in a number of countries the procedure for ratification has already been started or ratification is being considered for the foreseeable future. The Governments of the Dominican Republic, Nicaragua, Uruguay and Venezuela state that the Convention has been submitted to the National Congress with proposals for ratification. In Sudan preparations have been

¹ RCE, 1959, pp. 72-73.

² Viet-Nam.

³ Canada and United States (information on submission, 1963).

⁴ Information on submission, 1964.

⁵ Information on submission, 1962.

made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. The Government of Morocco has before it the question of starting the procedure for ratification.

115. The Belgian Government states that it intends to propose ratification as a gesture of solidarity. The Government of Dahomey states that it is possible to ratify the Convention. In Ecuador the Government considers it desirable to ratify the Convention. In Sierra Leone a tripartite consultative committee has made its recommendations to the Government and formal ratification may be expected after the Government has considered them. In Hungary the Government intends to reconsider the possibilities of ratifying. The Government of Tunisia envisages ratifying the Convention shortly. The Iranian Government is at present carrying out a careful study of the Convention, which may be ratified in the near future. In Nigeria, a memorandum on the Convention will shortly be submitted to the National Labour Advisory Council. The Government of Rumania states that national law is in conformity with the principles of the Convention and that ratification will be considered when the revision of the labour legislation has been completed.

116. Certain governments consider that ratification would call for the adoption of special measures. In Guatemala the ratification of the Convention would make it necessary to adopt measures for its application and the advisability of ratification is being studied at present. The report from Guyana shows that the possibility of ratification will be considered as soon as the Labour Ordinance has been amended.

117. Lastly, the Governments of Burma, Cuba, Pakistan and Togo state that there is no obstacle to ratification.

118. To conclude, the information available at present shows that the Convention has been submitted to the competent authorities with a view to ratification in four countries, that it will shortly be submitted to the competent authorities in two countries, that ratification is being prepared in two countries and is contemplated in some five others; the government of one country states that ratification is possible.

CHAPTER III

LABOUR ADMINISTRATION

LABOUR INSPECTION CONVENTION, 1947 (No. 81)

119. The Convention lays down the principle that each State which ratifies it must have a system of labour inspection to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers in industrial workplaces, it being left to the State's discretion whether or not to cover mining, transport and commercial undertakings. Some of the provisions of the Convention deal with the organisation and functioning of inspection services: responsibility of a central authority, co-operation with other services, both public and private, and with employers and workers or their organisations; recruitment of qualified staff, including women, in sufficient numbers; facilities—offices, transport—appropriate to the needs of the service; regular and thorough inspection of establishments; publication of annual reports and statistics on the activities of the inspection services.

120. Other essential provisions of the Convention are concerned with the role of the labour inspector—to inform and advise employers and workers and, where necessary, to take steps to suppress breaches of the law—and the powers that should be conferred upon him to enable him to carry out his functions: power to enter freely by day or by night any workplace liable to inspection; power to make inquiries unhindered: by interrogation, the examination of documents, the removal of samples; power to make orders with a view to remedying defects; power to give warnings or to institute proceedings as he deems fit.

121. The effective exercise of such powers requires that the inspector should command respect; the Convention relies for his authority upon a status and conditions of service such that he is assured of stability of employment and adequate career prospects and is independent of any improper influences. In return the inspector is expected to comply with certain obligations, which may be summed up as follows: detachment (inspectors should not have any direct or indirect interest in the undertakings under their supervision) and absolute professional secrecy, both as concerns the undertakings inspected (manufacturing processes or commercial secrets) and with regard to any workers who may approach them (treating as confidential the source of any complaint).

122. To date the Convention has been ratified by 70 countries.¹ A total of 33 reports have been furnished by States which have not ratified it.

¹ Algeria, Argentina, Austria, Barbados, Belgium, Brazil, Bulgaria, Cameroon (Western Cameroon), Central African Republic, Ceylon, Chad, China, Colombia, Congo (Kinshasa), Costa Rica, Cuba, Cyprus, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Republic of Guinea, Guyana, Haiti, India, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lebanon, Luxembourg, Malawi, Malaysia, Republic of Mali, Malta, Islamic Republic of Mauritania, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Portugal, Senegal, Sierra Leone, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, Tanzania (Tanganyika), Tunisia, Turkey, Uganda, United Arab Republic, United Kingdom, Venezuela, Viet-Nam, Yugoslavia.

Difficulties Encountered

123. The difficulties standing in the way of ratification of the Convention are essentially of two kinds: material difficulties and legal difficulties.

124. A number of developing countries have stated that lack of qualified staff or funds to provide the inspection services with proper equipment has prevented or delayed ratification of the Convention.¹

125. Some of the legal difficulties derive from the structure of the country in question. Federal States, for instance, have referred to the sharing of responsibility for inspection by the federal State and the individual constituent units.² It would appear, however, that if it is not possible to adopt measures applicable throughout the country, the setting up or extension of machinery for consultation between the federal authorities and the authorities of the units of the federation should help to overcome this difficulty.

126. One country states that it has not been possible to ratify the Convention because the inspection services are competent to deal only with health and safety questions, but adds that competent supervisory bodies exist in respect of other areas of inspection.³

127. Another country finds Article 6 of the Convention, which stipulates that labour inspectors must be "public officials", an obstacle to ratification, its inspection staff being composed mainly of trade unionists.⁴ It is clear, however, from the deliberations which led up to the adoption of the Convention that what the Conference had in mind in wording Article 6 as it did was the guaranteeing to inspectors of stability and independence in their employment, and that giving them civil service status appeared to be the most appropriate means of affording them such guarantees. Other formulas offering the same guarantees have also been regarded as satisfactory.⁵

128. For one country the main obstacle to ratification is the fact that labour inspectors fall into the category of "officials holding posts of confidence, a situation which is incompatible with the provisions of Article 6 of the Convention".⁶

129. Most of the other difficulties mentioned by Members arise out of divergences between national legislation and the Convention; in some cases it is considered impossible to eliminate such divergences; in others amending legislation is considered necessary before ratification becomes possible. The function of conciliator or arbitrator in labour disputes, often entrusted to inspectors, is considered by three countries as being an obstacle to ratification.⁷ It should be recalled in this connection that it is the associated Recommendation (No. 81) which advocates that inspectors should not act as conciliators or arbitrators, while Convention No. 81 objects to this only in so far as such functions would interfere with the discharge of the inspectors' primary duties.

¹ Burundi (article 19 report, 1966), Congo (Brazzaville) (article 19 report, 1966), Ecuador, Lesotho, Rwanda.

² Australia, Canada, United States.

³ Hungary.

⁴ Poland.

⁵ RCE, 1966, General Survey, paras. 99 and 100.

⁶ Mexico.

⁷ Ecuador, Gabon, Ivory Coast.

130. The fact that under national legislation the powers of inspectors are more limited than those provided for by the Convention have been mentioned by several countries as creating a discrepancy which would have to be eliminated before the Convention could be ratified. The restricting of the right of entry to "any time during working hours" or "any reasonable hour" constitutes one such divergency¹; the absence of provisions entitling inspectors to take samples of materials or substances used in the undertaking is another. One country states that empowering inspectors to enter premises freely by day or by night would be contrary to the provisions of the national Constitution with respect to the inviolability of one's domicile.²

131. One government has stated that, since no provision is made in the country for women to become labour inspectors, ratification is not contemplated.³ In another country one of the main obstacles to the ratification is that legislation makes insufficient provision for the compulsory notification of industrial accidents and cases of occupational disease.⁴ Lastly, in reference to the obligation to publish an annual general report on the work of the inspection service, one country has stated that the federal authorities do not publish such a report.⁴

132. Several countries have explained the delay in ratification of the Convention as being due to the need to amend regulations or make changes in administrative procedures before ratification can take place.⁵

133. Lastly, one country has declared that it has no inspection system at all.⁶

134. It will be seen from the above review that in fact the main obstacles to ratification derive from a shortage of qualified staff, a lack of material and financial resources, and persistent shortcomings in the administrative structure of a number of countries. Material obstacles of this nature are, indeed, invoked more often than difficulties of a purely legislative order. These remarks do not differ essentially from the conclusions reached when the matter was last reviewed in 1966. Since then four ratifications have nevertheless been registered.⁷

Measures Taken or Envisaged

135. A number of countries are contemplating or are in the process of making changes in their law or practice to make ratification possible. Others are engaged in a detailed study of the Convention. In Burma any decision as to ratification will have to wait until new legislation has been passed. The Government of Canada states that the difficulties which have hitherto constituted an impediment to ratification now appear to be relatively minor, and that further consideration of the Convention will be given high priority. Chile states that as soon as the Civil Service Regulations are promulgated the Government will be in a position to ratify the Convention. In Upper Volta the Convention is shortly to be placed before the competent authority. Amendments to the legislation of the Philippines to give effect to those provisions of the Convention not yet covered by national legislation have been proposed to

¹ Australia, Libya (article 19 report, 1966).

² Uruguay.

³ Gabon.

⁴ Australia.

⁵ Czechoslovakia, Ecuador, Libya (article 19 report, 1966).

⁶ Laos (article 19 report, 1966).

⁷ Colombia, Congo (Kinshasa), Paraguay, Venezuela.

Congress. In Uruguay, whose legislation makes no provision for the compulsory notification of industrial accidents and cases of occupational disease, an amendment to the law on employment injuries has been proposed to that effect. The Ukraine and the USSR, on the other hand, state that their inspection system, which differs from that provided for in the Convention, offers firmer guarantees for the enforcement of labour legislation within the national context.

136. Zambia presents a special case by stating that, since national legislation is consistent with the Convention, ratification is not an urgent matter. The Committee, however, is of the view that in these circumstances the ratification of an instrument dealing with such an important subject would be very useful.

Ratification Prospects

137. Finally, some countries take a more positive attitude to ratification. In Jordan ratification was approved in 1963.¹ In Nicaragua the Convention was submitted to Congress with a view to ratification in August 1967. Ethiopia hopes to ratify the Convention before the 53rd Session of the Conference. The Malagasy Republic has stated that the Government plans to ratify the Convention in due course.² In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. The Government of Rumania states that national legislation is in conformity with the principles embodied in the Convention and that ratification will be considered when the revision of the labour legislation is completed. Dahomey, Iran, Niger and Togo merely state that their legislation is in conformity with the Convention and that there is no technical difficulty in the way of ratification.

138. In conclusion, the information now available indicates that ratification of the Convention has been approved by the competent authorities in one country, submitted to the legislative authorities for approval in another, and is contemplated in four countries and the legislation is in conformity in four other countries according to the governments' reports.

¹ Letter of 26 January 1963 from the Minister of Foreign Affairs.

² Article 19 report 1966.

CHAPTER IV

EMPLOYMENT POLICY AND SERVICES

EMPLOYMENT SERVICE CONVENTION, 1948 (No. 88)

139. The Convention requires member States to establish and maintain a free public employment service, the essential duty of which is to ensure the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources. Detailed provisions are laid down regarding the organisation of the service and its co-operation with other authorities to ensure effective recruitment and placement. The co-operation of employers' and workers' representatives is provided for through advisory committees and otherwise; the nature of the employment service's activities and the measures it should take are set out and the special needs of certain categories of workers are taken into account. The Convention also contains requirements regarding the status and conditions of the staff of the employment service.

140. The Convention has thus far been ratified by 49 countries.¹ A total of 51 reports have been supplied by non-ratifying States.

Difficulties Encountered

141. A fundamental difficulty mentioned by some governments relates to the establishment of an employment service. One government considers it difficult to establish the service owing to lack of sufficient personnel²; another indicates that ratification of the Convention would require the reorganisation of the Ministry of Labour and would necessitate special budgetary allocation, which would not be possible at the moment³, and a third government considers that it would not be opportune to ratify the Convention owing to the present situation in the country.⁴ Other countries state that the full implementation of the Convention would be difficult at the present stage.⁵

142. Other problems relate to the organisation and scope of the existing service. In one country the national legislation does not accord with the provision of the Convention requiring that placement be effected by public authorities but substantial

¹ Algeria, Argentina, Australia, Belgium, Brazil, Bulgaria (subsequently denounced), Canada, Central African Republic, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ethiopia, France, Federal Republic of Germany, Ghana, Greece, Guatemala, India, Iraq, Israel, Italy, Japan, Kenya, Libya, Luxembourg, Malta, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Sierra Leone, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, Tanzania (Tanganyika), Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom, Venezuela, Yugoslavia.

² Ecuador.

³ Nicaragua.

⁴ China (letter of 19 February 1968 from the Ministry of the Interior).

⁵ Rwanda, Viet-Nam.

changes are to be introduced in the system in 1969.¹ In another the government feels that some divergences and possibilities of different interpretation still exist concerning occupational mobility, and regarding the means of ascertaining the qualifications of the staff of the employment service.² Another government refers to difficulties regarding the measures required to meet adequately the needs of particular categories of workers, such as disabled persons, and regarding the use of the employment service facilities by employers and workers on a voluntary basis.³

143. In one country it was not yet considered desirable to extend the competence of the employment service to cover workers who wish to change jobs because of the prevailing high incidence of unemployment.⁴ The governments of two countries indicate that the structure and functions of their employment service are basically different from those envisaged in the Convention.⁵ The government of one country states that it cannot extend the employment service to all professional activities.⁶

144. One of the principal difficulties preventing or delaying the ratification of the Convention, cited by a number of governments, is the inability to comply fully with the provisions of the Convention relating to the employment service's co-operation in the administration of unemployment insurance⁷; this is often explained by the absence of such unemployment insurance schemes.⁸

145. In this connection, it may be noted that, while Article 6 (*d*) of the Convention provides that the employment service shall co-operate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed as one of the means of ensuring effective recruitment and placement, this does not imply an obligation to establish unemployment insurance schemes, a subject which is covered by other Conventions.

146. The present structure of the service in one country does not permit the establishment of offices sufficient in number to serve each geographical area of the country and conveniently located for employers and workers as required by the Convention.⁹ The government of another country indicates that owing to the relative absence of industry there is no need for measures complying fully with the Convention.¹⁰ Another government states that, although the facilities provided do not meet the standard fixed by the Convention, they are adequate for the present needs of the country.¹¹

147. Three governments state that, although an employment service exists, there are no advisory committees.¹²

¹ Denmark.

² Finland.

³ Morocco.

⁴ Guyana (report under articles 22 and 35 for 1963-65 on the application of the Convention to British Guiana).

⁵ Bulgaria, Ukraine.

⁶ Portugal.

⁷ Finland, Mali, Morocco.

⁸ Dahomey, Gabon, Jamaica, Zambia.

⁹ Senegal.

¹⁰ Lesotho.

¹¹ Malawi.

¹² Ceylon, Jamaica, Malawi.

148. The government of one country feels that the problems relating to the existence of private employment agencies would be an obstacle to ratification.¹ It should be noted in this connection that the Convention does not deal with the existence of private employment agencies but merely specifies, in Article 11, that the public employment service should co-operate with private agencies not conducted with a view to profit.

Measures Taken or Envisaged

149. Measures to give effect to the terms of the Convention are mentioned in several reports. Thus the Government of Uruguay states that a draft Bill on the National Employment Service has been prepared in accordance with the Convention. Consideration is to be given to the provisions of the Convention when future amendments are made to the Labour Law of Kuwait which now only covers implicitly such matters as employment services and employment exchanges which undertake to find jobs for unemployed workers. The Government of Senegal states that the structure of the employment service is constantly changing and is gradually to be brought into conformity with the provisions of the Convention. In Barbados the Government maintains an employment exchange and has plans to put into effect a number of provisions of the Convention which are relevant to the country. A number of other governments, in referring to the prospects of ratification, also indicate that legislative or other measures which will meet the requirements of the Convention have been taken recently or are being envisaged.

Ratification Prospects

150. A number of governments supply information regarding the possible ratification of the Convention. The Government of Nicaragua indicates that the Convention was submitted to the National Congress in August 1967 with a view to ratification. The Government of Austria indicates that the Convention is applied *de facto* although certain of the necessary legal foundations do not yet exist; an Employment Promotion Act is being drafted which will change the situation and ratification will be considered after this Act comes into force. In Cameroon and Chile ratification will be possible after the rules relating to the employment service, which will comply with the Convention, have been made. Ratification will also be considered by Denmark after the Employment Service and Unemployment Insurance (Amendment) Act, 1968, comes into force on 1 April 1969.

151. The Government of Rumania indicates that national legislation conforms with the principles of the Convention and that its ratification is envisaged when the revision of the labour legislation has been completed.

152. The Government of Congo (Kinshasa) indicates that account has been taken of the Convention in establishing a national employment service and that a study will be made of the work of the service before the possibility of ratification is examined. The Government of Dahomey states that ratification will be considered when the economic position of the country permits the establishment of a permanent unemployment insurance scheme. In Ireland the Government is considering proposals for a fundamental reorganisation of the employment service which would reopen the question of ratification. The Government of Malaysia hopes that it will be possible to ratify the Convention after the present plan to develop and improve the service has been completed. The possibility of ratifying the Convention is now being

¹ Mexico.

considered or will soon be considered in a number of other countries, such as Bolivia, Burma, Ecuador, Finland and Hungary. Finally, the Governments of Niger, Pakistan and Togo indicate that there is no difficulty preventing or delaying the ratification of the Convention.

153. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in one country, that its ratification is being considered in five countries and will be considered in some six others; the governments of three countries state that no difficulties prevent ratification.

EMPLOYMENT POLICY CONVENTION, 1964 (No. 122)

154. Each State which ratifies the Convention undertakes to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. This policy must aim at ensuring that there will be work for all who are available for and seeking work, that such work will be as productive as possible, that there is freedom of choice of employment, and that each worker will have the fullest possible opportunity to qualify for and to use his skills and endowments in a job for which he is well suited, irrespective of his race, colour, sex, religion, political opinion, national extraction or social origin.

155. The employment policy must take due account of the stage and level of economic development and be pursued by methods appropriate to national conditions.

156. The measures to be adopted for attaining the objectives laid down by the Convention must be decided and kept under review within the framework of a co-ordinated economic and social policy and such steps as may be needed for the application of these measures, including when appropriate the establishment of programmes, must be taken. Representatives of workers and employers must be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their co-operation in formulating and enlisting support for such policies.

157. So far, the Convention has been ratified by 25 countries.¹ A total of 68 reports have been furnished by States which have not yet ratified the Convention.

Difficulties Encountered

158. One of the obstacles to ratification of the Convention most often mentioned by governments in their reports is the impossibility of fulfilling the objectives of the Convention immediately. Some of the developing countries refer to the impossibility of achieving full employment in the foreseeable future.² Other countries state in more general terms that their present stage of development does not yet permit of ratification of the Convention.³ One country even expresses doubts as to the

¹ Brazil, Byelorussia, Canada, Chile, Costa Rica, Cyprus, Finland, Republic of Guinea, Ireland, Jordan, Malagasy Republic, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Senegal, Sweden, Thailand, Tunisia, Uganda, Ukraine, USSR, United Kingdom.

² Ghana, Guyana, India, Malaysia, Nigeria, Turkey.

³ Congo (Kinshasa), Ivory Coast, Kenya, Kuwait, Lesotho, Malawi, Trinidad and Tobago (information on submission, 1968), Upper Volta, Viet-Nam, Zambia.

possibility of a State guaranteeing full employment in a market economy, since it has to take into account not only employment objectives but also other economic objectives such as price stability or the balance of payments, and all of these aims could never be attained at the same time.¹

159. It is not considered that the impossibility of achieving full employment in the immediate future should be looked upon as an obstacle to ratification of the Convention, since the obligation deriving from its terms is not to achieve full employment immediately, but to pursue a policy designed to promote it. The Convention specifically states that such a policy should take account of the stage and level of economic development as well as the mutual relationships between employment objectives and other economic and social objectives. Furthermore, the policy advocated by the Convention is itself viewed as a means of stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment. According to the Convention it is therefore the intention underlying the measures taken as a whole and their forcefulness which count—bearing in mind, of course, the economic and social conditions prevailing in a particular country.

160. The other obstacles to ratification to which attention is drawn in reports concern the methods to be used and the measures to be adopted for the implementation of the employment policy. One country considers that effect cannot be given to the Convention by means of legislation, since in respect of such matters it could only impose rigid measures.¹ Some countries plead lack of available resources to carry out an employment policy², or more specifically to ensure that the national employment service is run properly³, or the absence of unemployment insurance.⁴ One country declares that the contents and extent of the full employment policy to be declared and pursued by each Member cannot always be clearly defined, since full, productive and freely chosen employment can only be achieved by action in all fields—monetary, financial, industrial, etc.⁵ Another country queries the extent of the “mandatory character” of the Convention.⁶ Yet another country, in which full employment is an accomplished fact, wonders whether new measures will have to be taken to give effect to Article 2 of the Convention, and what kind of measures these should be.⁷

161. In this connection Articles 1 and 2 of the Convention leave to the discretion of each Member the choice of the methods to be followed in framing and pursuing its employment policy, having regard to its level of development, as well as the choice of the measures to be adopted within the framework of this policy, these measures having to be conceived in such terms as to attain the objectives specified in Article 1 of the Convention, and if possible kept under review to take account of changes in the general economic and social situation, as provided in Article 2.

162. Other difficulties of a more specific nature have been cited. Some countries have stated that they are unable to ratify the Convention because their national laws

¹ Austria.

² Rwanda.

³ Ecuador, Nicaragua.

⁴ Turkey.

⁵ Japan.

⁶ Denmark.

⁷ Luxembourg.

and practice allow priority in employment to be given to nationals over aliens, this being inconsistent with Article 1, paragraph 2 (c), of the Convention, which prohibits discrimination on the basis of national extraction.¹ One government declares that ratification is dependent upon the solution of the problem of providing employment for "stateless persons" resident in the country.² It should be pointed out that the term "national extraction" is taken from Article 1, paragraph 1 (a) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and is intended to refer to such distinctions as may be made in a State as between nationals of that State on the ground of the foreign ancestry of some of these nationals and not distinctions made with respect to foreign nationals.³

163. Lastly, one country has expressed doubts as to the interpretation to be given to Article 3 of the Convention and stated that it could not ratify the Convention if this provision was intended to mean that the views of the employers and workers consulted had to be fully complied with in every case.⁴ It may be worth recalling that Article 3 of the Convention does not confer any right of co-decision upon the representatives of the employers and workers, but stipulates that they should be consulted. The purpose of such consultation is, moreover, stated in the Convention as being to enable their experience and views to be taken into account in the formulation of employment policies and their co-operation and support to be enlisted.

164. Bearing in mind the various considerations mentioned above, in the majority of cases there does not appear to be any fundamental obstacle in the way of ratification of the Convention. It is significant in this connection that most of the countries which have felt unable to ratify the Convention have nevertheless expressed their sympathy with its aims⁵ or stated that their policy is in conformity with the Convention.⁶

Measures Taken or Envisaged

165. It is to be noted that the principles embodied in the Convention have also found wide acceptance in other countries which have not yet ratified the Convention. Barbados, Ceylon, Jamaica, Mali and Singapore have declared that they are in agreement with the provisions of the Convention; some countries have stated that effect is given to these provisions either by national employment policy (Hungary, Morocco, Uruguay) or by national legislation (Guatemala, Italy, Nicaragua (whose Government declares that there is no divergency between the legislation and the Convention)) or by national legislation and economic policy (Czechoslovakia); the Government of the Dominican Republic has stated that the application of the Convention is a reality, while in Dahomey there would, it is stated, be no difficulty in applying it; the Government of Singapore has expressed the intention of giving full effect to the Convention.

¹ Gabon, Mexico (these countries have ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)).

² Ceylon.

³ In this connection see the memorandum by the International Labour Office published in the *Official Bulletin*, Vol. XLII, No. 7 (1959), pp. 395-397.

⁴ Federal Republic of Germany.

⁵ Austria, Congo (Kinshasa), Gabon, Ivory Coast, Kenya, Rwanda, Trinidad and Tobago (information on submission, 1968), Zambia.

⁶ Ghana, Luxembourg, Malaysia, Turkey, Upper Volta.

166. Some reports refer to measures contemplated in connection with the Convention. In Uruguay it is proposed to give effect to the Convention through the enactment of a law. In Congo (Kinshasa) a national employment service is being established. In Luxembourg the employment service is being reorganised. It is planned to set up a National Human Resources Council in Nicaragua; in Argentina a Directorate of Human Resources is being set up, which will be responsible for matters relating to employment policy.¹ Mali has undertaken an employment planning programme, with assistance from the ILO, while an ILO expert has gone to Syria to study and improve its employment services. The Government of Ethiopia has asked for the assistance of an ILO expert to study manpower evaluation and planning and intends, once this study has been completed, to prepare a draft law to apply the Convention.

Ratification Prospects

167. Many reports give indications as to the prospects for ratification of the Convention. Ratification has been approved by the competent authorities in Cuba ², but the instruments of ratification have not yet been communicated to the ILO. The Convention has been submitted for approval to the competent authorities in Belgium ³, the Dominican Republic, Iran ⁴, Nicaragua ⁵, Syria, the United States and Venezuela. In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. The procedure for ratification has been initiated or will be initiated shortly in France, Italy and Morocco. In Australia the ratification is being considered actively. There appear no difficulties in the Commonwealth jurisdiction and all States but one have agreed to ratification. In Israel steps are now being taken with a view to ratification of the Convention. Ratification is contemplated in Cameroon and Czechoslovakia and is to be considered in Dahomey.

168. The possibility of ratification is at present being examined in Bolivia ⁶, Burma, Colombia, Guatemala, Jamaica, Niger and Spain; it will be considered in Sierra Leone as and when the legislative programme permits, and reconsidered in Hungary. The matter will be considered or reconsidered after the adoption of certain legislative enactments within the purview of the Convention in the Federal Republic of Germany ⁷, Ethiopia ⁸, China ⁹ and Luxembourg.¹⁰ According to the Government no difficulties prevent ratification of the Convention by Portugal.

169. The Government of Rumania states that national legislation is in conformity with the principles of the Convention and that ratification will be considered when the revision of the labour legislation is completed.

170. The Government of Ecuador is favourably disposed towards ratification of the Convention, but this depends on the resources needed for its application being

¹ For information concerning the employment service, see above under the Employment Service Convention, 1948 (No. 88).

² Letter of 8 March 1966 from the Permanent Representative of Cuba in Geneva.

³ Letter of 4 March 1969 from the Ministry of Employment and Labour.

⁴ Letter of 24 July 1966 from the Ministry of Labour.

⁵ See under footnote 3, para. 160, however.

⁶ According to the report, ratification depends upon economic possibilities.

⁷ Employment Promotion Bill.

⁸ The Government will bring the Convention to the attention of the competent authorities.

⁹ Proposed Employment Security Law.

¹⁰ Proposed law for the reorganising of the National Labour Exchange.

available. As for the Government of Tanzania, the possibility of ratifying the Convention will be kept in mind, since the Convention appears to constitute a useful guide to national policy. The extension of the ratification of the Convention to the Australian territories of New Guinea and Papua will be considered at the appropriate time.

171. In conclusion, the information now available indicates that ratification of the Convention has been approved by the competent authorities in one country, that it has been submitted for approval to the competent authorities in six countries, that ratification is being prepared in five countries, is being considered in eight others, and is contemplated in three countries. The government of one country states that no difficulties prevent ratification.

CHAPTER V

WAGES

MINIMUM WAGE FIXING MACHINERY CONVENTION, 1928 (No. 26) ¹

172. The Convention requires ratifying countries to create or maintain minimum wage fixing machinery in certain of the trades (manufacture and commerce) or parts of trades (particularly in home-working trades) where there is no arrangement for the effective regulation of wages by collective agreement or otherwise and where wages are exceptionally low. Representatives of the employers and workers concerned and of their respective organisations are to be consulted before the said machinery is applied to a trade or part of a trade. Furthermore, the employers and workers concerned must be associated in equal numbers and on equal terms in the operation of the machinery. It is also specified that the minimum rates of wages shall be binding on the parties concerned and that information on the practical application of the Convention must be sent to the ILO periodically.

173. The Convention has so far been ratified by 76 countries.² A total of 29 reports have been supplied by non-ratifying States.

Difficulties Encountered

174. It seems from the information supplied by governments that in many cases the decision not to ratify the Convention is not so much due to difficulties in meeting its requirements as to the view that ratification would serve no useful purpose because of the conditions or system existing in the country. This may be due to a highly developed system of collective agreements³, combined with opposition by the employers' and workers' organisations to any proposal to depart from the present wage fixing system.⁴ It may also be due to the fact, mentioned by one government, that the trade union membership covers practically the whole labour force, that the

¹ It may be noted that the International Labour Conference will consider at its 53rd Session (Geneva, 1969) an item entitled "Minimum Wage Fixing Machinery and Related Problems, with Special Reference to Developing Countries".

² Argentina, Australia, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burma, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo (Brazzaville), Congo (Kinshasa), Cuba, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, France, Gabon, Federal Republic of Germany, Ghana, Guatemala, Republic of Guinea, Guyana, Hungary, India, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Kenya, Lebanon, Lesotho, Luxembourg, Malagasy Republic, Malawi, Republic of Mali, Malta, Islamic Republic of Mauritania, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Paraguay, Peru, Portugal, Rwanda, Senegal, Sierra Leone, Republic of South Africa, Spain, Sudan, Switzerland, Syrian Arab Republic, Tanzania, Togo, Tunisia, Uganda, United Arab Republic, United Kingdom, Upper Volta, Uruguay, Venezuela, Viet-Nam, Zambia.

³ Denmark, Finland.

⁴ Sweden.

wages are regulated by collective agreements and may be extended to all non-organised employers and employees, and that home-working trades do not exist to any substantial extent.¹ Similarly, the government of another country indicates in this regard that there is no need for minimum wage fixing machinery in the prevailing situation as the regulation of wages is adequately taken care of in practice.²

175. In considering difficulties preventing ratification reference should be made to cases such as that of one country the government of which recognises that the creation of minimum wage fixing machinery is of paramount importance but indicates that economic instability, due to rapid progress, made it difficult for specialists in this field to agree on minimum wages.³

176. The government of another country refers to several difficulties.⁴ The first relates to the absence of provision for consultation of employers' organisations in the Minimum Wage Fixing Act: it may be recalled in this connection that the same matter was raised by this government in 1958 when it was pointed out that this is not contrary to the Convention since the Act in question operates only where no competent employers' organisation exists.⁵ The second difficulty relates to the lack of specific provision in the Home-Working Act of 1961 for workers and employers to be consulted in all circumstances: in this case also there would seem to be no real divergency with the Convention, in view of the prior consultation of the persons concerned and of the representation of workers and employers on the home-working committee on an equal footing, which is required by the Act when minimum wage rates are fixed. The third difficulty mentioned by the government relates to the invalidation of minimum wage rates by collective agreements: in this regard also it has already been pointed out⁵ that this need not be considered as a difficulty since a general provision for the supersession of a minimum wage award by a collective agreement would not run counter to the Convention. In another case the government indicates that for 16 years no recourse has been had to the Minimum Wage Law as the government considers that wage fixing should be left to ordinary trade union activity; however, reference is also made to comparatively underpaid groups of unorganised or poorly organised workers, such as girls and women in clerical work and in small establishments, in respect of whom appropriate measures are being considered.⁶ Finally, in one case it is stated that the difficulty in the way of ratification is that the matters dealt with in the Convention are appropriate, in whole or in part, for action by the constituent States.⁷

Ratification Prospects

177. The ten years separating the last survey prepared on this Convention and the present review are marked by a notable increase in the number of ratifications, from 37 in 1958 to 76 today; thus a Convention adopted as far back as 1928 would seem, as already noted by the Committee in 1958, to conserve its value.

¹ Israel.

² Singapore.

³ Kuwait.

⁴ Austria.

⁵ RCE, 1958, General Survey, para. 73.

⁶ Cyprus.

⁷ United States.

178. The latest information available on the subject shows that some additional ratifications may be expected, often as a result of new measures which have been taken or are being envisaged in regard to minimum wage fixing machinery. Thus, in Iran the Convention has been submitted to Parliament for ratification. In Austria¹ the Convention is being considered with a view to ratification, while the Government of Greece is examining the possibility of adapting the national legislation to the provisions of the Convention to enable its ratification. The Government of Ethiopia states that it will consider the Convention as soon as a survey on the matter, now under way, is completed and the report approved. The Government of Malaysia intends to take steps to ratify the Convention. In Japan, where legislation on the subject has been recently enacted, the fundamental policy to be adopted in regard to minimum wages is reviewed, and the Government is prepared to take the necessary measures and then to consider the question of ratification. The Government of Rumania indicates that national legislation conforms with the principle of the Convention and that its ratification is envisaged when the revision of the labour legislation has been completed. Finally, the Government of Turkey states that the question of ratification of the Convention may be considered at a later date, on the basis of experience acquired in the working of the recent legislation on minimum wages.

179. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in one country and that its ratification is being considered in some five countries.

MINIMUM WAGE FIXING MACHINERY (AGRICULTURE) CONVENTION, 1951 (No. 99)

180. The Convention provides for the creation or maintenance of adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations. The precise undertakings, occupations and categories of persons to be covered and the nature and form of the machinery as well as the methods to be followed in its operation are to be determined after consultation with the most representative organisations of employers and workers concerned, if any. The employers and workers concerned are to take part on a basis of complete equality in the operation of the machinery. Provision is made for the possible exclusion of particular categories of persons whose conditions of employment render the provisions of the Convention inapplicable to them, and exceptions are permitted for handicapped workers.

181. The Convention further requires that statutory rates must be binding on the employers and workers. It also prescribes enforcement measures (including, where necessary, provision for supervision, inspections and sanctions) and the right of workers to recover amounts underpaid. Information on the practical application of the Convention must be sent to the ILO periodically.

182. The Convention has so far been ratified by 30 countries.² A total of 67 reports have been supplied by non-ratifying States.

¹ Statement made by the Minister of Social Affairs at the plenary sitting of the 52nd Session of the Conference (1968).

² Algeria, Austria, Belgium, Brazil, Central African Republic, Ceylon, Colombia, Costa Rica, Cuba, Czechoslovakia, France, Gabon, Federal Republic of Germany, Guatemala, Republic of Guinea, Ivory Coast, Malawi, Mexico, Morocco, Netherlands, New Zealand, Paraguay, Peru, Philippines, Senegal, Sierra Leone, Syrian Arab Republic, Tunisia, United Kingdom, Uruguay:

Difficulties Encountered

183. In reporting on the difficulties preventing or delaying the ratification of the Convention, a number of governments indicate that the system of collective bargaining in agriculture is highly developed and works satisfactorily, thus obviating the need for special minimum wage fixing machinery¹; two of these governments also refer to the absence of public control or of suitable labour inspection in regard to wages in agriculture.² In this connection, it may be pointed out that the Convention can be implemented through collective agreements³, provided these agreements together with any other relevant provisions ensure the application of the various requirements of the Convention.

184. Another case where the need for minimum wage fixing machinery is obviated, according to the government, is that of countries where most agricultural undertakings are run under a co-operative system in which a different wage fixing method is used.⁴

185. A special difficulty mentioned by certain governments involves cases where a single nation-wide minimum wage rate is prescribed for industry and agriculture alike⁵, a situation which may mean, more specifically, that the agricultural employers and workers concerned—or their organisations—are not consulted or do not take part in the operation of the minimum wage fixing machinery.⁶ A somewhat similar reason for not ratifying the Convention is invoked by another government which states that the present situation in the country—collective bargaining together with general minimum wage fixing machinery—is satisfactory and that it is not considered necessary to prescribe specific measures for wage fixing in agriculture.⁷ It may be pointed out in this regard that the Convention does not require the creation of separate machinery for agricultural workers and that the question of consultation of, or participation by, the agricultural workers and employers may be ensured by their proper representation within the more general arrangements.

186. One government indicates that, although there is no major difficulty preventing ratification, it does not wish to do so as it is already bound by Convention No. 26 which applies to all branches of activity.⁸ Here, it should be pointed out that Convention No. 26 applies only to minimum wage fixing in industry and commerce, whereas Convention No. 99 is concerned with agriculture and related occupations.

187. Certain governments indicate that measures such as the Convention requires are unnecessary in their countries because of the relative lack of agriculture⁹, or because of the fact that a large proportion of agricultural undertakings are run on a family system.¹⁰ As regards this last point, it should be noted that such conditions do not in themselves constitute an obstacle to the implementation of the Convention since the latter expressly provides for the possible exclusion of members of the farmer's family from application (Article 1, paragraph 3).

¹ Denmark, Finland, Israel, Jamaica, Malaysia, Nigeria, Norway, Sweden.

² Nigeria, Norway.

³ See also RCE, 1958, General Survey, para. 33.

⁴ Bulgaria.

⁵ Ghana.

⁶ Chile.

⁷ Guyana.

⁸ Congo (Kinshasa).

⁹ Kuwait, Singapore.

¹⁰ Lesotho, Luxembourg, Nigeria.

188. Certain countries refer to their federal structure: one government indicates that all the constituent states have not agreed to ratification¹, and two others indicate that the Convention is partly within the authority of the federal government and partly within that of the provinces or states.²

189. Other reasons invoked for non-ratification include the following: that some doubt still exists as to whether the recently established machinery is sufficient to ensure the full application of the Convention³; that the government wishes to refrain—except in special circumstances not existing in agriculture—from direct intervention in wage fixing since this would be incompatible with the economic system⁴; that the government has doubts as to whether the legislation gives full effect to the Convention and also prefers to rely on collective bargaining⁵; that in one country, though the legislation is stated by the government to be in harmony with the Convention, there are difficulties in connection with the application of the national legislation⁶; and that a state of war exists at present.⁷

Measures Taken or Envisaged

190. Many of the difficulties mentioned above had already been brought up by governments in the previous article 19 reports on this Convention. None the less, the number of ratifications has increased materially in the years since 1958 when this Convention was last examined by the Committee of Experts (from 12 to 30), and the information analysed below shows not only that many countries are adopting new measures to fix minimum wages in agriculture, but also that a considerable number of new ratifications may be expected within a fairly short period.

191. A number of governments refer in their reports to measures recently taken, or still under consideration, on the subject of minimum wage fixing in agriculture. Thus People's Peasants' Councils are being set up throughout Burma, an operation which will affect the decision to ratify the Convention; in China temporary regulations fixing wages in agriculture were adopted in 1968; in Hungary a number of decrees regarding the payment of wages were issued in 1967; in Kenya statutory measures were taken in 1965 and 1967 to meet the requirements of the Convention; in Malta an agricultural and allied industries wages council was set up in 1967; in the case of Rwanda reference is made to a new law on agricultural workers which is to conform to the Convention; finally, in Venezuela a decree on minimum wage fixing in agriculture was promulgated in 1966 and a law which will also deal with this question is now being prepared.

Ratification Prospects

192. The possible ratification of the Convention is mentioned specifically by a considerable number of governments. Thus, in Nicaragua, Turkey and Venezuela the Convention has already been submitted to parliament for ratification. In addition, the Government of Italy states that it will be able to ratify the Convention very

¹ Australia.

² Canada, United States.

³ Malta.

⁴ Switzerland.

⁵ Cyprus.

⁶ Portugal.

⁷ Viet-Nam.

shortly, the Kenyan Government states that arrangements are in hand for ratification, and the Governments of Dahomey and Spain indicate that the Convention could be ratified without any difficulty whatsoever. The Government of Rumania indicates that national legislation conforms with the principles of the Convention and that its ratification is envisaged when the revision of the labour legislation has been completed. In Cameroon the possibility of ratifying the Convention will be envisaged after a ministerial decree laying down the minimum conditions of accommodation and the standard daily ration of food has been issued.

193. In other cases it is stated in more general terms that the possibility of the ratification of the Convention is being considered, as in Australia, Bolivia, China, Hungary, India, Japan and Portugal¹; or that it may be considered at a later stage, as in Burma, Ethiopia, Upper Volta and Zambia.

194. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in three countries, that its ratification is being prepared in two countries and is being considered in some eight other countries; the governments of two countries state that no difficulties prevent ratification.

PROTECTION OF WAGES CONVENTION, 1949 (No. 95)

195. After defining the term "wages", the Convention indicates the persons covered by its provisions, leaving the possibility open to governments of excluding certain categories of persons (non-manual workers and domestic staff). It goes on to lay down standards in respect of such matters as the form in which wages should be paid, the possibility of paying part of the wages in kind under certain conditions, the freedom of the worker to dispose of his wages as he thinks fit without any compulsion to buy from works stores, the regulation and limitation of deductions from wages, the protection of wages in the event of the bankruptcy or judicial liquidation of an undertaking, regularity of payment, the time and place of payment, and the provision of information to workers about matters connected with their wages.

196. To date the Convention has been ratified by 61 countries.² A total of 43 reports have been furnished by States which have not ratified the Convention.

Difficulties Encountered

197. Three countries have stated that the compulsory nature of most of the provisions of the Convention constitutes the main obstacle to ratification, since in these countries the principle of freedom of negotiation is generally accepted, on wages as on other matters.³

¹ Article 19 report, 1957.

² Afghanistan, Algeria, Argentina, Austria, Barbados, Brazil, Bulgaria, Byelorussia, Cameroon, Central African Republic, Chad, China, Colombia, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Dahomey, Ecuador, France, Gabon, Greece, Guatemala, Republic of Guinea, Guyana, Honduras, Hungary, Iraq, Israel, Italy, Ivory Coast, Libya, Malagasy Republic, Malaysia, Republic of Mali, Malta, Islamic Republic of Mauritania, Mexico, Netherlands, Niger, Nigeria, Norway, Paraguay, Philippines, Poland, Senegal, Sierra Leone, Somali Republic (former British Somaliland), Spain, Syrian Arab Republic, Tanzania, Togo, Tunisia, Turkey, Uganda, Ukraine, USSR, United Arab Republic, United Kingdom, Upper Volta, Uruguay.

³ Denmark, Sweden, Switzerland.

198. In some countries the main difficulty apparently lies in the fact that the scope of the Convention is wider than that of national legislation¹, which is not applicable to certain categories of workers (such as agricultural workers², domestic staff³, those whose wages exceed a specified minimum⁴, or private salaried employees⁵). In this connection it should be pointed out that Article 2 of the Convention provides for the possibility of excluding from the application of all or some of its provisions certain categories of workers not employed in manual labour or employed in domestic service or work similar thereto.

199. Some countries have stated that provisions corresponding to certain standards laid down in the Convention are lacking in national legislation, but that in practice they are complied with.⁶ One country has stated that in order to meet all the provisions of the Convention it would be necessary to enact new legislation as well as amend existing legislation, an exercise which is not considered necessary, having regard to local practice.⁷ Several countries have indicated that certain requirements of the Convention are not entirely met by national legislation or in practice or are not embodied in the legislation.⁸ One country refers to certain difficulties as regards the application of the national legislation, which otherwise is stated by the government to be in harmony with the Convention.⁹

200. One country considers that the economic and social situation renders anachronistic some of the provisions of the Convention, such as those relating to the prohibition of the payment of wages in the form of liquor of high alcoholic content or of noxious drugs, or the absence of any coercion upon workers to make use of works stores.¹⁰ Other governments have also stated that no special measures are required in their countries to implement the provisions concerning works stores.¹¹

201. In the light of these various comments it should be pointed out that the Convention is worded in such a way as to allow for a certain amount of flexibility as to the manner in which effect is given to it. While some of its provisions concern prohibitions which appear to require the existence of statutory provisions or provisions with the force of law, others permit their application by means of collective agreements or arbitration awards (or even by arrangement between the employer and the worker, or by practice). Yet other provisions call for the adoption of measures only under certain conditions or if there is a danger of abuse, or are worded in such a way that they could be applied by practice or current usage.¹²

¹ Burma, Chile, India, Kenya, Luxembourg, New Zealand, Pakistan, Singapore, Switzerland.

² Luxembourg.

³ Kenya.

⁴ Chile.

⁵ Federal Republic of Germany (Articles 3 (para. 1), 4, 7 and 12 (para. 2)), Japan (Article 13 (para. 1)).

⁶ Jamaica.

⁷ Australia (Articles 6, 7 (para. 2) and 13 (para. 2)), Ceylon (Article 3 (para. 2)), Finland (Articles 4, 9 and 13 (para. 2)), Federal Republic of Germany (Articles 11 and 13 (para. 2)), Ghana (Articles 5 and 10 to 14), Ireland (Articles 8 to 10), Singapore (Article 10), Sweden (Article 8).

⁸ Portugal.

⁹ Czechoslovakia.

¹⁰ Malawi, New Zealand.

¹¹ See, in this connection, the opinion expressed by the ILO in answer to a request from the Government of the Federal Republic of Germany : *Official Bulletin*, Vol. XXXVII, No. 7, 31 Dec. 1954, pp. 386-391, and the observation concerning the application of the Convention to Cyprus: RCE, 1960, p. 67.

202. Two countries have mentioned their federal structure. In one the matters dealt with in the Convention are partly within the authority of the federal Parliament and partly within the authority of the legislatures of the provinces¹; however, the Government is giving high priority to a study of the Convention and of the exact degree to which law and practice appear now to conform to the Convention. In the other country ratification is not considered appropriate in view of the fact that the provisions of the Convention involve, to a considerable degree, areas of state jurisdiction.² In another federal country legislation in at least one state does not conform with certain provisions of the Convention.³

203. One country mentions the existence of certain technical difficulties which necessitate further examination of the problem of ratification.⁴

204. The above analysis highlights the fact that the difficulties standing in the way of ratification of the Convention arise from provisions which differ from country to country. These difficulties are, broadly speaking, of the same order as those which existed in 1953, when reports were last submitted on this Convention under article 19 of the Constitution. Some countries have themselves stated that the situation has not changed since 1953, or have referred to the reports they submitted at that time.⁵ It is interesting to note, however, that whilst in 1954 the Convention had been ratified by only ten countries, the number of ratifications today is sixty-one.

Measures Taken or Envisaged

205. Several countries have stated that measures have been taken or are contemplated with a view to giving effect to the provisions of the Convention. This is the case with the Dominican Republic, where the provisions of the Convention are embodied in national legislation; Ethiopia, where the Convention will be taken into consideration as soon as the survey which is under way is completed and the report on it approved; and Kuwait, where the provisions of the Convention will likewise be taken into consideration when the labour law now in force is amended. In Luxembourg, where the legislation governing the legal position of workers in the event of the bankruptcy of their employer is now being reviewed, a solution is being sought which will give wages due to workers absolute priority over all other debts.

Ratification Prospects

206. According to the report of Nicaragua there is no difficulty involving legislation or practice in the way of ratification, and the Convention has already been submitted to Congress for consideration. In Venezuela the Convention was submitted to Congress in 1968 with a view to ratification. In Sudan preparations have been made to submit the Convention to the Constituent Assembly for ratification, which was expected before the end of 1968. The Government of Viet-Nam is contemplating the submission of the Convention to the competent authorities with a view to ratification. Belgium, Iran and Rwanda have stated their intention of ratifying the Convention. In Ceylon the Convention is being studied with a view to ratification.

¹ Canada.

² United States.

³ Australia (Articles 3 (para. 2), 9, 12 and 14 (b)).

⁴ Japan.

⁵ Federal Republic of Germany, India, Ireland (where the obstacles to ratification are currently being re-examined by the Government, however), Japan, Switzerland, United States.

The Governments of the Congo (Kinshasa), Lesotho and Zambia state that their legislation is in conformity with the provisions of the Convention and that there is no difficulty in the way of ratification. The Government of Ghana considers that there are no difficulties preventing ratification of the Convention, but that regulations will have to be made to give effect to those Articles of the Convention not at present covered by national legislation. In Kenya a new Employment Act, now being drafted, will enable the provisions of the Convention to be accepted in full. In Czechoslovakia the possibility of ratification will be examined within the context of the essential legislative measures now being drafted. In Morocco, in order to decide upon the conditions to be attached to ratification if it were to take place, a study is to be undertaken to determine whether certain categories of persons would have to be excluded from the application of all or any of the provisions of the Convention, as provided for in Article 2 of the instrument. The Government of Rumania states that the legislation is in conformity with the principles embodied in the Convention and that ratification will be considered when the revision of the labour legislation is completed.

207. In conclusion, the information now available indicates that the Convention has been submitted for approval to the competent authorities in two countries and is ready for submission to the competent authorities with a view to its ratification in another country, that ratification is being prepared in one country, and is contemplated in three others. The governments of four countries state that no difficulties prevent ratification.

CHAPTER VI

SOCIAL SECURITY

SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (No. 102)

208. This Convention deals in a single instrument with the nine main branches of social security, namely medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit (Parts II to X).

209. The acceptance of three of these nine branches is enough for ratification, but these three must include at least one of those relating to unemployment, employment injury, old age, invalidity and survivors. States that have ratified it in respect of certain of its Parts can later accept the obligations deriving from other Parts. Further, Article 3 of the Convention authorises a number of temporary exceptions for States "whose economy and medical facilities are insufficiently developed". These States may in particular restrict the protection provided for by the Convention in each branch accepted to a smaller number of persons, determined by referring simply to the numbers of wage earners employed in industrial workplaces of a certain size (employing 20 persons or more).

210. The Convention provides for medical care (and in some cases for certain other benefits in kind) and for cash benefits consisting of periodical payments. In addition to certain rules common to Parts I, XI, XII and XIII (definitions and organisation, calculation of benefits, financing, claims, etc.), the Convention has in each branch special provisions defining the contingency, the minimum coverage of the protection given, the level of benefits, their duration and the conditions for their granting. On these points the Convention is drafted with enough flexibility to take account of various techniques and stages of development. Accordingly, the scope is determined, as a rule, by the choice of States Members, in three ways: by reference to employees, to the economically active population, or to residents. Likewise, the minimum level of benefits taking the form of periodic payments is calculated by reference to the level of wages in the country concerned.

211. As regards the method of calculation of benefits the Convention provides three formulae intended to suit the practical working of the various systems of protection: benefits proportional or partly proportional to the previous earnings of the beneficiaries or their breadwinners (Article 65); benefits fixed at a uniform rate or in any case including a fixed minimum amount related to the wage of an ordinary labourer (Article 66); benefits depending on the means of the persons concerned during the contingency, the amount of which, when the person concerned has not enough means to justify a reduction, is fixed as in the previous case (Article 67).

212. As regards the rates of cash benefits the Convention fixes for each of the contingencies covered the rates at which such benefits must be paid in relation to the previous earnings of a skilled manual male employee (Article 65), or to the earnings of an ordinary labourer (Articles 66 and 67) for persons depending on their family situation (standard beneficiaries). For other beneficiaries the benefits must bear a reasonable relation to those of the standard beneficiary. In calculating these benefits account must also be taken of family allowances paid during the contingency.

213. Non-national residents must have the same rights as national residents; provided that special rules may be prescribed in respect of benefits payable wholly or mainly out of public funds and in respect of transitional schemes (Article 68).

214. Benefits may also be suspended in certain cases and in particular when the beneficiary is absent from the territory of the State Member, when, subject to certain conditions, he is maintained at public expense or at the expense of a social security institution or service or is in receipt of other benefits, and in certain other circumstances connected with his behaviour (Article 69). Every claimant must have a right of appeal in case of refusal of the benefit or complaint concerning its quality or quantity.

215. The Convention lays down a number of principles concerning the financing of benefits and provides that the State Member shall accept general responsibility for the due provision of benefits and the proper administration of the institutions and services concerned in its application. Finally, the Convention provides that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department, representatives of the persons protected shall participate in the management of social security institutions, or be associated therewith in a consultative capacity.

216. The Convention has been ratified by 19 States¹ that have accepted all or some of its Parts. A total of 76 reports has been provided by States that have not ratified it.

Difficulties Encountered

217. The difficulties pointed out by governments relate sometimes to general, sometimes to particular, points.

218. A number of governments² state that the financial situation and the stage of economic development of their countries do not for the time being allow them to ratify the Convention. It is clear from the reports received, however, that some of the States in question have social security schemes based on the principles set forth by the Convention and covering several of its branches. They might, then, so far as these schemes meet the standards laid down by the Convention, consider the possibility of accepting the corresponding Parts of this instrument, taking advantage, where necessary, of the exceptions provided for by Article 3. Indeed, it is to take into

¹ Belgium (Parts II-X), Denmark (Parts II, IV-VI and IX), Federal Republic of Germany (Parts II-X), Greece (Parts II-VI and VIII-X), Iceland (Parts V, VII and IX), Ireland (Parts III, IV and X), Israel (Parts V, VI and X), Italy (Parts V, VII and VIII), Luxembourg (Parts II-X), Islamic Republic of Mauritania (Parts V-VII, IX and X), Mexico (Parts II, III, V, VI and VIII-X), Netherlands (Parts II-X), Niger (Parts V-VIII), Norway (Parts II-VII), Peru (Parts II, III, V, VIII and IX), Senegal (Parts VI-VIII), Sweden (Parts II-IV and VI-VIII), United Kingdom (Parts II-V, VII and X), Yugoslavia (Parts II-VI, VIII and X).

² Ceylon, Congo (Kinshasa), Dahomey, Kenya, Lesotho, Nigeria, Rwanda, Sierra Leone, Singapore, Syrian Arab Republic, Tunisia, Upper Volta, Zambia.

account very different degrees of development and to make the minimum standard accessible to countries that are but little industrialised that the Convention, as has been said above, contains in several connections formulae that are flexible enough to enable the State concerned to reach its aims gradually.¹ To ratify the Convention then it is not necessary, as certain governments seem to think, to wait for all its branches to be covered by national legislation.

219. Some other States ² indicate that their social security schemes do not cover the number of Parts required to ratify the Convention, or that, if they cover them, the national legislation is not in full conformity with one or other of them.

220. Certain States ³, with social security schemes covering most of the branches covered by the Convention, indicate that their legislation has many differences on points of principle or of detail from the provisions of the Convention, which makes it impossible for the moment to consider ratification.

221. Some States ⁴ specify that the differences relate mainly to coverage; the number of persons protected does not reach the percentage established by the Convention, because the national legislation covers only certain groups of workers, because it does not apply to the whole territory, or again because it applies only to industrial establishments employing at least 20 persons. On the last point it should be recalled that the States concerned might consider taking advantage of the exceptions provided for by Article 3 of the Convention.

222. Other States refer to the level of cash benefits ⁵ (for example rate or duration of benefits inadequate, absence of reduced benefits where the conditions concerning the qualifying period are not fully met) or to the nature of the medical care ⁶ (for example no provision for domiciliary visits, no hospitalisation or hospitalisation for a reduced period of certain members of the family of the insured person).

223. Some other States ⁷ stress the fact that, in the branches covered, their legislation does not ensure equality of treatment between national residents and non-national residents, as prescribed by Article 68 of the Convention. It should, however,

¹ See RCE, 1961, General Survey, para. 3.

² Gabon, Guatemala, Ivory Coast.

³ Including: Bulgaria, Cuba, Hungary, Jamaica, Malawi, New Zealand, Poland (article 19 report, 1961), Spain, Switzerland (in principle, the insurance schemes are optional but supervised by the public authorities. In many cantons, however, they have been declared compulsory. It should be recorded in this connection that for certain of its Parts and in certain conditions the Convention authorises Members to take account of insurance that is not compulsory (Article 6)), United States (the questions dealt with by the Convention come partly under the federal authorities and partly under those of the states. The federal Government indicates, however, that legislation seems to be in conformity with Parts V, IX and X of the Convention and with the relevant provisions of Parts XI, XII and XIII), Uruguay.

⁴ Burma, Colombia, India (the Government states that, even under Article 3 of the Convention, the percentage of persons protected is not reached), Iraq (the social security scheme covers industrial establishments employing 20 workers or more), Pakistan, Switzerland (for certain branches), Uruguay (sickness insurance).

⁵ Cuba (absence of reduced benefits), Hungary (the Government states that, although the rate of the benefits is higher, there are differences in the way of calculating them and in the definition of the standard beneficiary), Malta (for certain branches), Pakistan, Poland (absence of reduced benefits, calculation of benefits based on elements other than those of the Convention—article 19 report, 1961), Spain (for certain cases of invalidity insurance), Switzerland (for most of the branches covered).

⁶ Cuba, Hungary, India, Japan, Malta, Spain.

⁷ Ghana, Malta.

be recalled that the Convention is flexibly drafted on this point and that in certain cases it allows the establishment of special rules, as has already been said. Still other States¹ refer to cases of suspension that in the national framework would go beyond those provided for by Article 69 of the Convention. There are States² that indicate among other things that their legislation does not contain provisions to adapt the benefits to fluctuations in the economic situation, particularly in respect of long-term benefits. Finally, one government states that it is not possible to apply certain principles of the Convention to the whole national territory, in particular not to some of the overseas provinces.³

Measures Taken or Envisaged

224. Despite the difficulties set forth above, several countries, as a result of the Convention, have adopted, or intended to adopt, either specific measures giving effect to certain of the provisions or more general measures improving the existing social security schemes. Thus, in many cases the minimum standards laid down by the Convention are reached or even exceeded, particularly in respect of short-term benefits, except in the branch of unemployment insurance. Special efforts have been made to improve medical care. Improvement of long-term benefits also seems to preoccupy several countries, in particular those whose social security schemes are still at the stage of being organised.

225. Since 1960, when governments were called on to furnish reports on this Convention under article 19 of the Constitution, considerable progress has been made in several of the spheres dealt with in it.

226. Accordingly, some countries have broadened the coverage of their social security schemes. Among them are Byelorussia, Ukraine and the USSR, where the benefits of social security have been extended to the members of kolkhozes. In Australia old-age and invalidity benefits have been extended to non-nationals. In India the coverage of state social insurance has been broadened in the field of sickness benefit, maternity benefit and employment injury benefit. In New Zealand a new Social Security Act has extended the coverage of certain benefits, in particular by broadening the definition of the term "resident" in accordance with the provisions of the Convention and in allowing the granting of survivors' benefits for certain dependent children. In Venezuela the social security scheme has been expanded both in respect of the number of persons protected and in respect of the benefits granted.

227. Some States have increased the rate or duration of cash benefits, either in general or in certain branches of social security: they include Byelorussia, the Ukraine and the USSR, whose Governments state that in certain cases the rate is 100 per cent of the wage. The level of benefits has also been raised in Hungary, in India, in Morocco (family benefit), in Switzerland (old-age and survivors' benefits), in the United States (old-age benefit) and in Venezuela.

228. In some States the improvements have applied to certain branches of existing schemes, in particular medical care and sickness benefit: this is true of Austria, Finland, India, Switzerland and the United States.

¹ Austria, Poland (suspension of certain benefits, regard being had to the other income of the beneficiaries—article 19 report, 1961).

² Austria, Malta, Poland (article 19 report, 1961).

³ Portugal.

229. In other States (Cameroon, Cuba, Guinea, Mali, Morocco, Pakistan (West), Rwanda and Togo), new social security schemes have been introduced to cover all or some of the contingencies covered by the Convention. The Government of Cuba states that the national scheme goes beyond the standards laid down by the Convention in certain important respects such as that of the coverage and the level of the benefits. The Government of Guinea states that the provisions of the national legislation meet the obligations deriving from the Convention in respect of family, employment injury, sickness, invalidity, old-age and survivors' benefits. The Government of Mali states that in some of the branches covered by the national social security scheme, the standards laid down by the Convention are reached or even exceeded, and the Government of Togo states that new laws and regulations have been adopted with the specific purpose of giving effect to the Parts of the Convention dealing with medical care, employment injury benefit, family benefit and maternity benefit. In Hungary a new pension scheme has been set up for members of agricultural production co-operatives and their families.

230. In Kuwait a first attempt to establish a social security scheme in certain branches covered by the Convention was made in 1962 with the Public Assistance Law.

231. Lastly, three other countries (Turkey, Uruguay and Venezuela) are examining the possibility of amending the existing schemes with a view to bringing them into closer harmony with the standards of the Convention, which would make it possible to give effect to certain of its Parts. Studies are also being carried out in Cameroon to see how far effect can be given to certain Parts of the Convention that are not covered by national law.

Ratification Prospects

232. Since 1961, when this Convention was the subject of a general survey under article 19 of the Constitution, eight new ratifications have been registered including five by developing countries. Besides, three States that have ratified it have extended the coverage to new Parts.¹

233. Several governments state that they have considered the possibility of ratifying the Convention in respect of certain Parts or of the whole.

234. The Government of Nicaragua states that the Convention has been submitted to the National Congress, and that in accepting Parts III, V, VI and VIII it will have to take advantage of the exceptions provided for by Article 3 of the Convention.

235. In Venezuela the Government considers that Parts II, III, V and VIII to X of the Convention could be accepted without difficulty, but states that ratification has had to be postponed to 1969 for reasons of internal procedure. This is also true of Turkey, and the Bill drafted for the purpose has been revised and again submitted to the Council of Ministers.

236. The Government of Chile states that, except in respect of unemployment benefit, national law does not stand in the way of ratifying the Convention. In the Dominican Republic the Convention is under study with a view to submission to Parliament.

¹ Denmark, Netherlands, Sweden.

237. In Cyprus the Government has decided to propose ratification of the Convention to Parliament; this seems to be true of Ecuador as well. In France certain reasons that formerly prevented ratification of the Convention no longer exist and the Government states that there seems to be nothing in the way of setting the procedure for ratification in motion soon.

238. The possibility of ratifying the Convention is also being considered in the following countries: Austria (Parts III to VI, IX and X), Barbados (Parts III, V and X), Brazil, Canada (several Parts), Costa Rica, Czechoslovakia, Finland, Uruguay.

239. Other countries are also considering ratification when certain improvements (already started in some cases) have been made to their national law; this conclusion is to be drawn from the reports of Ghana, Guyana and Liberia.¹

240. Lastly, the Government of Rumania states that national law is in harmony with the principles of the Convention and that ratification will be considered when the revision of the labour legislation has been completed.

241. To conclude, the information at present available shows that the Convention has been submitted to the competent authorities for approval in one country, that ratification is being prepared in two countries and is being considered in over ten others; the governments of four countries state that no difficulties prevent ratification.

EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962 (No. 118)

242. The Convention requires a member State to grant within its territory equal treatment with its own nationals to the nationals of any other member State for which the Convention is in force, to refugees and to stateless persons. Such equality of treatment relates to both coverage and the right to benefits and must be granted in respect of every branch of social security covered by the Convention for which the member State has accepted the obligations of the Convention.² It must be accorded without any condition of residence, save in the cases set out in Article 4, paragraph 2, which provides that the grant of certain benefits payable under non-contributory schemes may be made subject to a condition of residence, preceding the filing of a claim, the length of which may not exceed the period laid down by the Convention.

243. The obligations of the Convention may be accepted for one or more of the following branches of social security for which the member State has in effective operation legislation covering its own nationals: medical care, sickness, maternity, invalidity, old age, survivors, employment injury, unemployment and family benefits.

244. The Convention (which does not apply to special schemes for civil servants, for war victims or public assistance) requires that the provision of certain benefits (invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions) be guaranteed both to a State's own nationals and to the nationals of any other member State which has accepted the obligations in respect of the branch or branches concerned, when they are resident abroad. Similarly, the grant of family allowances, both to a State's own nationals and to the

¹ Article 19 report, 1961.

² It may be noted that the Convention permits a State to refuse equality of treatment, as regards any branch of social security, to nationals of another State which has legislation relating to that branch but does not grant equality of treatment in respect thereof to the nationals of the first State.

nationals of any other member State having accepted the obligations of the Convention for that branch, is to be guaranteed in respect of children who reside in the territory of any such member State. The Convention also provides that the ratifying States shall endeavour to participate in schemes for the maintenance of the acquired rights and rights in course of acquisition under their legislation of the nationals of member States for which the Convention is in force.

245. The Convention has thus far been ratified by 18 countries¹, which have accepted the obligations in respect of all or certain branches of social security. A total of 74 reports have been supplied by non-ratifying States.

Difficulties Encountered

246. One of the main difficulties preventing or delaying ratification of the Convention cited by a number of countries relates to the condition of residence for entitlement to benefits in respect of certain branches of social security² or to the fact that benefits are not paid in the case of residence abroad.³

247. As regards the condition of residence, it should be noted that, as appears from the discussions at the Conference when the Convention was adopted, this clause of the Convention (Article 4, paragraph 1) should be taken to mean that equality of treatment should not be restricted by a qualifying condition of residence imposed on non-nationals *only*, except in cases where such a restriction is permitted by the Convention. On the other hand, this provision is not in any way intended to require a member State to grant benefits to non-nationals without a qualifying condition of residence in cases where national laws impose such a condition on the nationals of the country concerned.⁴ It should also be recalled that under the same Article of the Convention equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence in its territory. Moreover, Article 4, paragraph 2, provides

¹ Brazil (branches (a) to (g)); Central African Republic (branches (c), (e), (g), (i)); China (branches (a) and (c) to (g)); Congo (Kinshasa) (branches (d), (e), (g)); Guatemala (branch (c)); Republic of Guinea (branches (a), (b), (c), (e), (f), (g), (i)); India (branches (a), (b), (c)); Ireland (branches (a), (b), (h), (i)); Israel (branches (c), (e), (f), (g), (i)); Italy (branches (a) to (i)); Jordan (branches (c), (d), (f), (g)); Malagasy Republic (branches (b), (c), (d), (g)); Islamic Republic of Mauritania (branches (d), (e), (f), (g), (i)); Netherlands (branches (a) to (i)); Norway (branches (f), (i)); Sweden (branches (a), (b), (c), (g), (h)); Syrian Arab Republic (branches (d) to (g)); and Tunisia (branches (a), (b), (c), (g), (i)).

² Belgium (family benefit), New Zealand.

³ Austria (sickness, accident and pensions schemes), Cameroon (employment injury benefit is not paid to the dependants if they were resident abroad when the accident occurred), Cuba, Czechoslovakia, Federal Republic of Germany (death grant not payable in respect of persons dying abroad; benefits suspended in certain cases of residence abroad), Hungary, Luxembourg (the non-contributory part of the pension cannot be paid abroad unless the Government authorises it), Mali (in respect of family benefit, however, workers who change their residence during periods of absence from work continue to receive this benefit, old-age benefits and employment injury pensions in certain cases), Mexico (pensions suspended during residence abroad), New Zealand (employment injury), Rwanda (the Government merely states that financial problems arise when a non-national returns abroad), Switzerland (the non-contributory part of invalidity, old-age and survivors' benefits cannot be paid abroad), and the United States (old-age, survivors' and invalidity benefits are payable abroad to nationals of other countries who pay benefits to United States nationals outside their territories without restriction. However, no benefits may be sent to persons residing in countries where there is no assurance that the benefits may be received).

⁴ See International Labour Conference: *Record of Proceedings*, 46th Session (1962), p. 756. See also *Equality of Treatment of Nationals and Non-Nationals in Social Security*, Report V (2), International Labour Conference, 46th Session, Geneva, 1962, p. 23.

that, except for medical care, sickness benefit, employment injury benefit and family benefit, the grant of benefits under non-contributory schemes, or which do not depend on a qualifying period of professional activity, can be made subject to the condition that the beneficiary (or the deceased in the case of survivors' benefit) has resided in the territory of the Member concerned for a certain period prescribed by the Convention (not exceeding six months for maternity benefit and unemployment benefit; five consecutive years for invalidity benefit and survivors' benefit; ten years after the age of 18 for old-age benefit).

248. The question of the payment of benefits to persons resident abroad arises in particular in relation to invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. It should be recalled in this connection that the obligations of the Convention can be accepted in respect of one or more branches of social security; that the obligations of a State which has accepted any of these branches of the Convention are limited to its own nationals and the nationals of States which have ratified the Convention for the same branches; that when these benefits are granted under non-contributory schemes their payment to beneficiaries resident abroad can be made subject to the participation of the member concerned in schemes for the maintenance of acquired rights and rights in the course of acquisition; and that benefits granted under transitional schemes do not come within the scope of this provision. The difficulties mentioned in this connection might, therefore, be re-examined in the light of the various factors just reviewed.

249. In certain countries the legislation requires that non-nationals should spend a certain period of employment in the country before any other period of their employment abroad could be included in the qualifying period.¹ In one country non-nationals are required in certain cases to provide evidence of a longer qualifying period of employment than are nationals.²

250. These difficulties should also be considered in the light of the exceptions authorised by the Convention in respect of conditions of residence for certain benefits and of the other considerations which have been mentioned above.

251. The requirement by national legislation of a certain period of residence (or of employment) for the grant of benefits other than medical care, sickness benefit, employment injury benefit or family benefit, may thus not be incompatible with the Convention, provided of course that the period does not exceed that laid down by the Convention and that the benefits in question are granted under a non-contributory scheme.

252. In other countries foreign nationals are either excepted from the scope of the national social security scheme³ or their benefits are lower than those of nationals.⁴ In some cases citizenship is required either for the recognition of certain periods for the purpose of insurance or for the grant of benefits.⁵

¹ Byelorussia, Czechoslovakia, Ukraine.

² Federal Republic of Germany (but only in relation to unemployment assistance schemes).

³ Ghana and Greece (where equality of treatment is accorded only to the nationals of Belgium, France and the Federal Republic of Germany, on the basis of bilateral treaties concluded with those countries).

⁴ Belgium and the United States (in 26 states and the District of Columbia, death benefits are provided to non-resident alien dependants either on a reduced basis or in lump-sum commutations in reduced amounts).

⁵ Austria (citizenship required for validation of periods of war service and assimilated periods with regard to invalidity, old-age and survivors' benefit) and the Federal Republic of Germany (family benefit for children residing abroad payable only to nationals of EEC member States).

253. In one country the government feels it difficult to apply the provisions of Articles 7 and 8 of the Convention in respect of the maintenance of the rights in course of acquisition.¹

254. Certain countries consider that the system of reciprocity instituted by the Convention is too broad in scope and that it would be preferable to safeguard the rights of foreign workers to social security by means of bilateral or multilateral agreements between the States concerned.²

255. In certain countries with a federal structure the matters dealt with in the Convention fall partly within the competence of the federal authorities and partly within the competence of the provinces or states.³

256. In some cases the government indicates that national conditions do not yet permit the establishment of a social security scheme or that there is no legislation providing for equality of treatment.⁴ Thus, ratification cannot be considered for the time being. On the other hand, one government feels that although national legislation is in conformity with the provisions of the Convention, a national provident fund covering employment accidents has to be set up.⁵ One country mentions financial difficulties⁶, another the existing state of war.⁷ In a further country the social security benefits listed in the Convention exist, but only for certain types of employees; on the other hand, the legislation in question applies equally to foreign nationals and to citizens.⁸ The government of one country considers that ratification should be postponed until a social security scheme, as closely following the scope of the Convention as possible, has been established.⁹ It may be pointed out in this connection that the Convention is based on the progressive application of its provisions in respect of one or more of the branches of social security mentioned therein and that it enables a ratifying member State to accept at a later stage the obligations of the Convention in respect of further branches of social security not specified at the time of ratification.

Measures Taken or Envisaged

257. Several countries indicate the measures which are being considered or will be taken with a view to giving fuller effect to various provisions of the Convention. Thus, in Ethiopia¹⁰, Guyana, Ivory Coast, Jamaica and Malaysia the Governments are considering the adoption of a social security scheme or of legislation on certain specific points, which would implement the provisions of the Convention. In the Federal Republic of Germany and Ghana the Governments have proposed the repeal of certain provisions of national legislation which are not in harmony with the Convention.

¹ Spain.

² Japan, United Kingdom.

³ Canada, United States.

⁴ Malawi, Rwanda.

⁵ Chad (information on submission, 1966).

⁶ Dahomey.

⁷ Viet-Nam.

⁸ Singapore.

⁹ Ivory Coast (information on submission, 1965).

¹⁰ Letter of 16 December 1966 from the Ministry of National Community Development and Social Affairs.

Ratification Prospects

258. A number of countries provide information concerning the possibility of ratifying the Convention. While in Denmark, Finland, Mexico¹ and Pakistan² the ratification has already been approved by the competent authorities, the Governments of Chile, Colombia, Dominican Republic, Iran³, Nicaragua, Uruguay and Venezuela state that the Convention has been submitted for ratification, and the Governments of Cyprus and Ecuador indicate that the Convention will be submitted to the competent authorities with a proposal for ratification. The Governments of Austria, Canada, France, Greece, Malta, Morocco, Nigeria and Tanzania indicate that the Convention either is being or will be considered by the competent authorities or services with a view to its possible ratification. In Barbados and Turkey steps are being taken to ratify the Convention and its ratification has been suggested by the governmental services in Kuwait.⁴ The Government of Iran states that it does not anticipate any difficulties as regards ratification of the Convention. The Government of Australia continues to examine the possibility of ratification in respect of medical care, sickness, maternity, unemployment and family benefits. The Government of Iraq indicates that as a new social security scheme has recently come into operation, some experience with the application of the scheme is needed before the ratification of the Convention. In Rwanda the ratification depends partly on the revision of a national law on social security and partly on the bilateral agreements which will be concluded on the subject. The Government of Rumania indicates that national legislation conforms with the principles of the Convention and its ratification is envisaged when the revision of the labour legislation has been completed. Finally, in Dahomey ratification could be considered later on.

259. In conclusion, it appears from the information available at present that ratification of the Convention has been approved by the competent authorities in four countries, that it has been submitted for approval to these authorities in seven countries, that it will be submitted for approval in two others, and that ratification is being prepared in three countries; the government of one country states that no difficulties prevent ratification.

¹ Letter of 5 February 1968 from the Permanent Delegation in Geneva.

² However, the formal instrument of ratification has not yet been registered because in East Pakistan there is no legislation in effective operation, as required by Article 2 of the Convention. The instrument will be registered as soon as the East Pakistan social security legislation is enacted.

³ Letter of 24 July 1966 from the Ministry of Labour.

⁴ Periodic report on Human Rights submitted to the United Nations Economic and Social Council on 6 December 1966 (document E/CN.4/917/Add. 2).

CHAPTER VII

MINIMUM AGE

MINIMUM AGE (INDUSTRY) CONVENTION (REVISED), 1937 (No. 59)

260. The Convention fixes the minimum age for admission of children to industrial employment at fifteen years. Below this age no child should be employed or work in any public or private industrial undertaking. On the other hand, the Convention requires that national laws prescribe a higher age for employments which are dangerous to the life, health or morals of the persons employed therein. Certain exceptions are permitted in respect of children working in undertakings where only members of the employer's family are employed. The Convention does not apply to work done by children in technical schools.

261. The Convention has thus far been ratified by 22 countries.¹ A total of 73 reports have been supplied by non-ratifying States.

Difficulties Encountered

262. The main difficulty preventing ratification of the Convention cited by many countries is that the minimum age prescribed by national law or applied in practice for admission of children to industrial employment is lower than that laid down by the Convention. It is usually fixed at 14 years², but in a few countries below 14 years.³ In several countries, while the national legislation fixes a minimum age lower than 15 years, it provides for certain added safeguards: young persons under the prescribed age (which usually is 16 or 18 years) shall not be employed in work which is beyond their strength, or shall not work in harmful and dangerous industries.⁴ In some cases the government indicates that although the legislation is largely in conformity with the Convention and fixes the minimum age at 15 (or even at 16)

¹ Albania, Bulgaria, Byelorussia, China, Cuba, Ghana, Iraq, Italy, Kenya, Luxembourg, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Sierra Leone, Tanzania, Ukraine, USSR, Uruguay.

² Argentina, Barbados, Belgium, Brazil, (the Government merely indicates that the minimum age fixed by national legislation is lower than that prescribed by the Convention), Cameroon, Ceylon, Chile, Cyprus, Dominican Republic, Guatemala, Honduras (article 19 report, 1960), Malawi, Malaysia, Mali, Malta, Mexico, Nicaragua, Senegal, Spain, Upper Volta, Venezuela and Viet-Nam. The same situation appears in the following non-metropolitan territories: Bahamas, British Honduras (here, however, the Government indicates that the existing practice precludes employment of young persons under the age of 18 years), Hong Kong, St. Vincent.

³ El Salvador, Iran, Malaysia, Morocco, Singapore, United Arab Republic (article 19 report, 1960).

⁴ Bolivia, Congo (Kinshasa), Dahomey, Israel, Kuwait, Turkey.

years, certain exceptions may be allowed for children who have attained 14 years¹; or in certain parts of the country—where nine-year compulsory school attendance has not yet been introduced—the minimum age is under 15 years.² In one country, while the minimum age is fixed at 14 years, the government states that practically 80 per cent of children who have attained this age continue their studies at secondary schools, in apprenticeship courses, etc.³ In another country, while the national legislation fixes a higher minimum age than 15 years, the government finds it difficult to ensure the supervision of the application of this provision.⁴

263. In several countries employment of children under the age of 15 years in undertakings in which only members of the employer's family are employed is permitted more extensively than is provided for by the Convention.⁵

264. In certain cases the pertinent national law either does not relate to all the industrial undertakings referred to in the Convention or provides for certain exceptions.⁶

265. In some countries the register required by the Convention in respect of all employed persons under the age of 18 years is not kept at all, or is kept in respect of persons under an age lower than that prescribed by the Convention, or is kept only where more than a prescribed number of such persons is employed in the undertaking concerned, or this obligation does not apply to all employers.⁷ In one country legislation does not specifically require employers to keep a register of employees' dates of birth; however, according to the government, this is usually done in practice.⁸ In the case of India (for which special provisions are laid down in Article 7 of the Convention), the Government considers that the following difficulties prevent ratification: no provision exists for the medical certification of fitness for work in the case of adolescents working above ground in mines; it is difficult to provide for the compulsory medical examination of young persons employed above ground in mines.

266. The review which precedes seems to confirm that the main obstacle to ratification of the Convention in many countries is the fixing of the minimum age at a level lower than the 15 years prescribed by the Convention. While the article 19 survey made in 1960 on this Convention had revealed the same main obstacle to ratification, it is interesting to note that the Convention has in fact been ratified by nine more countries since that date.

Measures Taken or Envisaged

267. It is also significant that measures are under consideration in several further countries to raise the minimum age, which is at present lower than 15 years: Austria⁹, Cyprus, Israel and Morocco.¹⁰ In the Netherlands an amendment to the

¹ Australia, France, Sweden, Switzerland.

² Federal Republic of Germany (in Bavaria).

³ Hungary.

⁴ Ivory Coast.

⁵ Ceylon, Chile, Switzerland.

⁶ Burma, Denmark, Sweden.

⁷ Chile, Finland, Senegal, Sweden.

⁸ Australia.

⁹ Article 19 report, 1960.

¹⁰ The Government intends to raise the minimum age from 12 to 14 years.

Labour Act of 1919 raising the minimum age from 14 to 15 years has already been adopted by Parliament and it was hoped that it would come into force at the beginning of 1969. The Government of Jamaica intends to raise further the minimum age for employment in industrial undertakings. The Government of Cameroon states that it will take into account, if possible, the requirements of the Convention as to the fixing of the minimum age. In Barbados the Government intends to prepare up-to-date legislation on the subject and will give due consideration to the provisions of the Convention. Finally, in Finland the competent authority will define the line of division which separates industry from agriculture, in accordance with Article 1, paragraph 2, of the Convention.

Ratification Prospects

268. A number of countries provide information concerning the possibility of ratifying the Convention. While in Nicaragua the Convention has been submitted for approval to the National Congress, in Costa Rica and Czechoslovakia the Governments intend to submit it to the competent authorities. In the Dominican Republic the Convention is being considered by the competent ministry with a view to submitting it for approval to Parliament. The Governments of Burma, Congo (Kinshasa), Dahomey and Zambia do not envisage any difficulties in ratifying the Convention. Ratification seems possible, but not immediately, or could be considered at a later stage, according to the Governments of Bolivia, France, Guyana, Niger and Thailand.

269. The Government of Rumania indicates that national legislation conforms with the principles of the Convention and that its ratification is envisaged when the revision of the labour legislation has been completed. In Jamaica the ratification of the Convention cannot be considered until an amendment to the law to raise the minimum age for employments which are dangerous to the life, health or morals of the persons employed therein has been made.

270. Finally, the reports from Australia on Nauru and Norfolk Island indicate that no difficulties seem to prevent or delay extension of the Convention to these territories and the report from the United Kingdom on Bermuda states that the Convention is applied.

271. In conclusion, it appears from the information available at present that the Convention has been submitted for approval to the competent authorities in one country, that its ratification is being prepared in two countries and is being considered in another; the governments of four countries state that no difficulties prevent ratification.

CHAPTER VIII

MATERNITY PROTECTION

MATERNITY PROTECTION CONVENTION (REVISED), 1952 (No. 103)

272. The Convention applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including domestic staff and women wage earners working at home. It covers women working in public or private undertakings, irrespective of age, nationality, creed or marital status. It exempts only family undertakings, but allows for temporary exceptions to be made in respect of certain categories of non-industrial occupations, occupations carried on in agricultural undertakings, other than plantations, domestic work for wages in private households, work done at home or undertakings engaged in transport by sea (Article 7).

273. The Convention stipulates that the women to whom it applies must have a period of maternity leave of at least twelve weeks, not less than six of which must be taken after confinement. This leave must be extended in the event of any mistake in estimating the date of confinement or in case of illness arising out of pregnancy or confinement.

274. The Convention lays down that during this leave the woman shall be entitled to receive cash benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living, and medical benefits, including prenatal, confinement and postnatal care as well as hospitalisation care, where necessary, in a hospital of her choice.

275. Benefits must be provided either by means of compulsory social insurance or by means of public funds. Where cash benefits provided under compulsory social insurance are based on previous earnings, they must be at a rate of not less than two-thirds of the earnings taken into account. In no case may the employer be individually liable for the cost of benefits.

276. If a woman is nursing her child she must be entitled to interrupt her work for this purpose, such interruptions being counted as working hours and remunerated accordingly.

277. Lastly, the Convention prohibits the dismissal of a woman for any reason whatsoever while she is absent from work on maternity leave or at such a time that the notice of dismissal would expire during her absence.

278. To date the Convention has been ratified by 10 countries.¹ A total of 83 reports has been furnished by Members who have not ratified it.

¹ Brazil, Byelorussia, Cuba, Ecuador, Hungary, Spain, Ukraine, USSR, Uruguay, Yugoslavia.

Difficulties Encountered

279. A major obstacle to ratification to which many States have referred is the scope of the Convention.¹ The national legislation of most of these countries does not apply to women employed in agriculture or domestic service or working for wages at home or employed by transport undertakings. It should be pointed out, however, as concerns these categories of workers, that the States concerned may, at the time of ratification, consider availing themselves of the exceptions permitted under Article 7 of the Convention. Other countries state that their legislation, even though it covers most of the workers to whom the Convention applies, is applicable only to certain regions, either because of the federal structure of the countries in question² or due to circumstances peculiar to developing countries³ (a social security scheme applicable only to certain areas of the country, for instance).

280. In other cases certain categories of women are excluded from compulsory insurance schemes, either because they are married⁴ or on account of their high earnings⁵ (schemes applying an income ceiling to eligibility for insurance).

281. A second difficulty arises out of the length of the leave. Some countries appear to be experiencing some difficulty in introducing a minimum standard of twelve weeks as required by the Convention, or making postnatal leave compulsory.⁶

282. For one State a difficulty arises out of the fact that its legislation does not permit a woman to postpone her prenatal leave until after the expiration of her postnatal leave.⁷ It should be noted, however, that in this connection Article 3, paragraph 3, of the Convention is worded in extremely flexible terms, requiring a minimum of six weeks' leave to be compulsorily taken after confinement, but leaving it to the discretion of the legislation of each country as to how the remainder of the leave is to be taken.

283. Other countries state that their legislation does not provide for the possibility of prolonging maternity leave in the event of a mistake in estimating the date of confinement⁸ or in case of illness arising out of pregnancy or confinement.⁹ In this latter case it is pointed out that the provisions of the Convention relating to the prolongation of leave in case of illness (Article 3, paragraphs 4 and 5) merely provide for the possibility of granting supplementary sick leave in addition to the

¹ Argentina, Burma, Ceylon, Chile (only domestic workers excluded), Denmark, Ghana, India, Iran, Iraq, Italy (only in the case of women working at home and domestic servants, who are, however, covered by the insurance scheme), Jordan (article 19 report, 1965), Malaysia, Morocco, New Zealand (only women employed by public services and teachers are covered), Norway, Pakistan, Sweden, Switzerland, Turkey (article 19 report, 1965), United States, Viet-Nam.

² Australia, Canada, Malaysia (article 19 report, 1965), United States.

³ Burma, Guatemala, India.

⁴ United Kingdom.

⁵ Netherlands.

⁶ Argentina, Ceylon (four weeks' postnatal leave), China (article 19 report, 1965), Colombia, Costa Rica, Finland, Guatemala (article 19 report, 1965), India (in the areas where the Employees' State Insurance Act is not applicable), Ireland, Jordan (article 19 report, 1965), Kuwait, Malaysia (States of Malaya) (article 19 report, 1965), Morocco, Rwanda (article 19 report, 1965), Sweden (particularly for commercial employees and office workers), Switzerland, Tunisia, United Kingdom, Venezuela, Viet-Nam.

⁷ Senegal.

⁸ Norway, Pakistan, Venezuela.

⁹ Canada, Federal Republic of Germany (for women not covered by insurance during the postnatal leave period), Mexico, Morocco, Sweden.

normal period of maternity leave.¹ Since a number of the States in question have provisions affording equivalent protection under the sickness insurance scheme, the obstacle referred to does not appear to be insurmountable.

284. Another difficulty to which attention has been drawn concerns the level of benefit. Several countries state that the rate of cash benefit fixed by their social security legislation is lower than the two-thirds of previous earnings required by the Convention.² On this point also it is pointed out that the Convention (Article 4, paragraphs 2 and 6) imposes no obligation upon States ratifying it to take previous earnings as the basis for calculation of benefit, but allows for the possibility for determining the amount of benefit upon some other basis, such as presumptive earnings, for instance. Accordingly, it is only in cases where previous earnings are the basis for calculation of benefit that the benefit should be not less than two-thirds of the previous earnings taken into account.³ It should also be noted that in some of the countries which have invoked this difficulty women are entitled, in addition to the actual maternity allowance, to other cash benefits (prenatal allowances, maternity grants, etc.) which, taken together with the maternity allowance, reach the figure of two-thirds of the previous earnings stated in the Convention.

285. Although they are invoked less often, shortfalls in medical benefits also seem to constitute an obstacle in certain countries⁴, as does the absence of a provision guaranteeing freedom of choice of doctor or hospital.⁵

286. In other countries the employer is liable for all or part of the cost of maternity benefits, and this constitutes a major obstacle to ratification.⁶ In some cases the employer bears part of the cost of benefits and the insurance scheme bears the rest, or he is liable for the full cost of benefits due to employees who, for one reason or another, are not covered by the insurance scheme. In other cases the full cost of benefits must be borne by the employer because the financial and economic resources of the countries concerned are not yet sufficient to enable them to institute or generalise compulsory social security schemes. This latter difficulty is particularly stressed by certain countries, some of which add that ratification of the Convention would involve a financial burden too heavy for their economy to assume under present conditions.⁷

287. According to one State the only difficulty preventing ratification lies in the existence of a qualifying period prescribed by national legislation which stipulates that a woman must have been in employment for at least three months to be eligible for an allowance equal to 100 per cent of her earnings.⁸ It should be recalled in this

¹ RCE, 1965, General Survey, para. 125.

² Belgium, Central African Republic (article 19 report, 1965), Finland, France, Gabon, Iraq, Mauritania, Mexico, Morocco, Nicaragua, Niger, Norway, Switzerland, Viet-Nam.

³ RCE, 1965, General Survey, para. 138, footnote 1.

⁴ Iraq, Malaysia, Norway (only as concerns hospitalisation in private establishments), Philippines, Switzerland.

⁵ India, Nicaragua, Turkey (article 19 report, 1965), Venezuela.

⁶ Belgium (only as a supplement to benefits under the insurance scheme), Ceylon, China (article 19 report, 1965), Dominican Republic, Ghana, Guatemala (where the woman is not covered by the social security scheme), Iceland (article 19 report, 1965), India (in areas where the Employees' State Insurance Act is not applicable), Malaysia (article 19 report, 1965), Pakistan, Philippines, Singapore, Viet-Nam.

⁷ Guatemala, Ivory Coast, Jordan (article 19 report, 1965), Kenya, Lesotho, Morocco, Rwanda, Sierra Leone, Singapore, Syrian Arab Republic, Tanzania, Zambia.

⁸ Bulgaria.

connection that the requirement of a qualifying period is compatible with the Convention when benefits are provided under an insurance scheme (Article 4, paragraphs 4 and 5).

288. Other States refer to the absence of statutory provisions authorising the interruption of work for nursing purposes.¹ Here again it should be recalled that the Convention provides for the possibility of determining the position by collective agreement (Article 5).

289. The legislation of certain other countries contains no provision prohibiting the dismissal of a woman during her absence on maternity leave or forbidding it absolutely during the twelve weeks of her leave or during any extension of that leave.² It should be pointed out in this connection that the result of the prohibition imposed by the Convention is not to oblige an employer, who, for example, is closing down his business or who detects a serious fault on the part of one of his women employees, to maintain the employment contract of a woman worker, despite reasons justifying dismissal, because she is pregnant or confined, but merely to extend the legal period of notice by adding on a supplementary period equal to the period of protection provided for by the Convention.³

290. Lastly, a few States have indicated that national tradition and structure are such that there are few women among the working population, and they leave their jobs upon marriage; consequently these States do not consider it necessary for the time being to introduce a scheme for maternity protection complying fully with the Convention.⁴ One country merely states that there are certain divergences between the national legislation and the provisions of the Convention.⁵

Measures Taken or Envisaged

291. Even though a relatively short time has elapsed since members were last asked to furnish reports on this Convention under article 19 of the ILO Constitution, it will be seen that since that date (1964) some progress has been made towards closer observance of the standards laid down in the Convention.

292. Thus the coverage of the maternity protection scheme has been extended in Costa Rica, the Federal Republic of Germany, India, Norway, Poland and Turkey.

293. The legislation of Austria, France and Rwanda has been amended to increase the length of the period of maternity leave and provide for its extension if necessary, while in Nicaragua it has been judicially decided that the Labour Code (which provides for twelve weeks' leave) overrides the national Constitution. In Mali and Norway cash benefits have been increased. In Chile the provisions relating to nursing breaks have been made applicable to salaried employees. In France the Labour Code has been amended to make it absolutely forbidden to dismiss a woman during her absence on maternity leave.

¹ Belgium (though the Government does mention collective agreements), Canada, Denmark, Finland, Ireland (article 19 report, 1965), Israel (in the case of occasional or temporary employment), Morocco (except for agricultural workers), United Kingdom.

² Denmark, Dominican Republic, Finland, Federal Republic of Germany (article 19 report, 1965), Ireland (article 19 report, 1965), Sweden, United Kingdom (article 19 report, 1965).

³ RCE, 1965, General Survey, para. 200.

⁴ Afghanistan (article 19 report, 1965), Congo (Kinshasa), Cyprus (article 19 report, 1965), Jordan (article 19 report, 1965), New Zealand.

⁵ Portugal.

294. Other countries are considering the possibility of taking steps to amend existing legislation or enact new legislation to provide for the establishment of an appropriate social security scheme.

295. In Bulgaria, for instance, the new Labour Code now being drafted will take into account the existing inconsistencies with the Convention, while the Government of Ethiopia has decided to revise the legislation with this end in view. Amendments to national legislation will also be necessary in Venezuela.

296. In Norway and the United Kingdom the matter will be reviewed in the light of the results of studies now being carried out by special commissions.

297. Social security schemes making provision for maternity insurance are soon to be launched in Guyana and Malaysia.

298. Lastly, it should be noted that since the comprehensive survey undertaken in 1965 there have been two further ratifications of the Convention.¹

Ratification Prospects

299. Several governments have expressed their intention of ratifying the Convention in the foreseeable future. In Chile, Nicaragua and Upper Volta the Convention has been submitted to the competent authorities for approval. The Government of the Dominican Republic states that the Convention is now being examined by the competent departments with a view to its submission for approval to the competent authorities. The appropriate procedure has already been initiated in Italy, and in Luxembourg there is every reason to hope that ratification will take place shortly.

300. The Government of Austria intends to initiate the procedure for ratification, and in Greece a Bill has already been prepared to that effect. In Cameroon ratification will be envisaged as soon as the regulations implementing the Labour Code and the Family Benefits Code have been adopted. The Government of Dahomey states that it is in a position to ratify the Convention. The possibility of ratifying the Convention is to be examined in Czechoslovakia in the light of the work now being done on the revision of the national legislation, and in Guyana as soon as the social security scheme now being planned has been established. The Government of Rumania states that national legislation is in conformity with the principles embodied in the Convention and that ratification will be considered when the revision of the labour legislation is completed. The Government of Ethiopia states that revision of the legislation is necessary before it is prepared to ratify the Convention.

301. Lastly, the Governments of Iran and Viet-Nam state that ratification could take place only if certain exceptions were made in accordance with Article 7 of the Convention.

302. In conclusion, the information now available indicates that the Convention has been submitted for approval to the competent authorities in three countries, that ratification is being prepared in five countries and is envisaged in two others.

¹ Brazil, Spain.

CONCLUSIONS

303. The Governing Body's intention, in requesting reports under article 19 of the Constitution for 1968, was to provide the Fiftieth Anniversary Session of the International Labour Conference in 1969 with a suitable basis for reviewing the ratification prospects as regards seventeen Conventions carefully selected for this occasion. As a result, the Conference will have before it, on the one hand, the Summary of reports which is contained in Report III (Part 2) and, on the other hand, the present survey which aims at analysing the information received from governments. Before attempting to sum up certain specific conclusions which emerge, it may be useful to bring out some points of a more general nature.

304. If the degree of acceptance of the Conventions covered is compared from a purely numerical point of view, the survey shows some very broad variations: one Convention (No. 29) has been ratified by 103 States, another (No. 103) by only 10. The average number of ratifications is to be found about half way between these two extremes, at 51. While the date of adoption of a Convention naturally is an important element in determining its cumulative impact, the various chapters above have shown that certain earlier instruments have been much less widely ratified than others which were framed more recently. Nor need the response always be greatest during the years immediately following adoption; as pointed out below, the pace of ratification may quicken several decades later. Sometimes the detailed character of a Convention can be an element of delay. On the other hand, its subject-matter may command such general attention as to stimulate more rapid and widespread action. This has visibly been a factor in the case of the texts dealing with human rights and basic machinery which, individually and as a group, have secured a number of ratifications well in excess of the general average mentioned above.

305. Thus, the two freedom of association Conventions have been ratified by 76 and 86 States respectively, those on forced labour have received 103 and 83 ratifications, while those on discrimination in employment and on equal remuneration now bind 66 and 65 countries. As a result, the average number of ratifications of these human rights Conventions is 80. The totals for the instruments dealing with basic machinery are somewhat lower but none the less impressive: the Labour Inspection Convention has been ratified by 70 States, the Employment Service Convention by 49 and the Minimum Wage Fixing Machinery Convention by 76.

306. Because some of the other instruments covered by this survey have been much less widely ratified, the relatively large proportion of reports supplied by governments has materially facilitated the Committee's over-all task. As already indicated in the Introduction, 95 member States supplied information and the 841 reports thus available represent over 75 per cent of those due. While the Committee regrets that reports were not received in all cases, it was able to draw on a considerable body of other official data bearing directly on the possible ratification of the Conventions concerned. The potential value of the survey derives primarily from the authoritative character of the information on which it is based. In a sphere where further progress closely depends on the deliberations and decisions of governments it was essential to rely on their explanations in order to gain a clear and up-to-date picture of difficulties and prospects.

307. The Committee is aware that because of the inherently dynamic character of the process of implementation changes constantly occur in the position as new steps are envisaged, weighed and taken to give fuller effect to a Convention. Any attempt to sketch out the current position of a given instrument in a given country is therefore subject to last minute developments, foreseeable or otherwise. The caution thus required in interpreting the position in no way detracts from the validity of the findings but serves rather to emphasise the need for keeping the question of ratification under constant review also at the international level. The most tangible result of this continuing process is of course the receipt of further ratifications. It is significant and encouraging therefore that since 1 January 1968, i.e. the end of the period to be covered by the reports, the Director-General has registered another 38 ratifications of the Conventions included in the survey.¹ Regardless of whether or not these particular ratifications were connected in individual cases with the Governing Body's request—and therefore intended to coincide with the Fiftieth Anniversary Session—the Committee deems it appropriate to draw special attention to them in these conclusions.

308. In addition to the 38 ratifications recently communicated and registered, governments have reported some 10 further cases where the competent legislative authorities have formally approved the ratification of one or other of the Conventions under review. Receipt and registration may therefore be expected to intervene in the course of 1969, particularly as article 19, paragraph 5 (*d*), of the ILO Constitution provides that "if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General". Early measures to this effect would not only be in compliance with this provision but would, moreover, represent a tangible indication that the Governing Body's special anniversary request is serving its basic purpose.

309. With the same positive end in view the Committee was interested to find that in an even larger number of instances governments have submitted to their legislative authorities proposals to approve the ratification of one or more of the 17 Conventions. In these cases also, which totalled about 40, parliamentary consideration and action during 1969 would be in keeping with the spirit of the Governing Body's request.

310. In their replies to the first query in the form of report governments provide many other indications as regards "the extent to which it is proposed to give effect to the terms" of a Convention. The individual chapters above reflect the variety of the information thus available. This ranges from specific assurances that the ratification procedure has been initiated, to more general statements that ratification is envisaged or that there exist no difficulties preventing or delaying it. The Committee was impressed by the large number of cases where the reports mentioned legislative amendments which were under study and had a bearing on the subject-matter of a given Convention. Similarly, reference was made several times to new administrative arrangements which would facilitate ratification, particularly in the sphere of

¹ Convention No. 98 (Dahomey, Jordan, Venezuela); Convention No. 29 (Cambodia, Colombia, Kuwait, Thailand); Convention No. 105 (Italy, New Zealand, Paraguay, Uruguay); Convention No. 111 (Argentina, Colombia, Cyprus, Malta); Convention No. 100 (Dahomey, Ghana, Republic of Mali, Sierra Leone, Tunisia); Convention No. 117 (Brazil, Paraguay); Convention No. 81 (Congo (Kinshasa)); Convention No. 88 (Thailand, Tunisia); Convention No. 122 (Brazil, Byelorussia, Chile, Finland, Paraguay, Thailand, Ukraine); Convention No. 99 (Belgium, Colombia); Convention No. 102 (Ireland, Islamic Republic of Mauritania); Convention No. 118 (Brazil, Islamic Republic of Mauritania).

employment services. In many countries special committees are considering the effect to be given to Conventions; some of these bodies are, moreover, tripartite in composition, so that employers' and workers' representatives can participate in reaching a decision. In yet other cases the reports merely stated that account was being taken of the Convention or that further experience was needed before the question of ratification could be decided.

311. The findings thus tend to confirm the impression, already alluded to earlier, that governmental response to the seventeen Conventions cannot be summed up in static terms but is constantly evolving as studies are initiated, legislative or administrative changes introduced, parliamentary proposals formulated and discussed. This inter-action between international and national standards is a consequence, first of all, of the constitutional requirement to bring a newly adopted Convention "before the authorities within whose competence the matter lies, for the adoption of legislation or other action". The response is, however, by no means limited to the more recent instruments, as witnessed by the fact that the oldest Convention included in this survey, the Minimum Wage Fixing Machinery Convention, 1928 (No. 26), has received most of its ratifications—39 out of 76—during the past decade, i.e. 30 or more years after its original adoption. This continued validity of Conventions should help to add impetus to the acceptance of ILO standards in the years ahead and facilitate the measures required to overcome obstacles to their fuller implementation.

312. The Committee has attempted, in the various chapters above, to relate and analyse the nature of the obstacles mentioned by governments in reply to the second question in the report form. In doing so, the Committee has been able to draw on past experience in order to clarify doubtful points or to dispel misconceptions. Such experience is based not only on some four decades of supervision of the application of ratified Conventions but also on the Committee's two decades of activity in relation to unratified Conventions. The conclusions it had previously reached in a number of general surveys covering reports under both articles 19 and 22 of the Constitution proved useful to the Committee in dealing with similar or related problems in the present survey. The Committee has attempted to give certain explanations under the individual Conventions which, it hopes, will be of assistance to governments in their studies and measures to implement these instruments. The utility of the Governing Body's special request for article 19 reports, and of the Committee's comments on them, will in fact largely depend on the extent to which the review of the position, first by the governments in drawing up their reports, then by the Committee in compiling its survey, will stimulate and facilitate further action on the Conventions involved.

313. Aside from the technical comments and suggestions to be found in the individual chapters above there are also certain considerations of a more general character brought to light in the course of the survey. These relate, first of all, to the circumstances in which a ratification may intervene. Thus, among the reasons for not ratifying a Convention reference is made occasionally to the fact that full effect is already given to the instrument or that national law and practice go beyond its terms. As already pointed out above, article 19 of the ILO Constitution specifies, in its paragraph 8, that "in no case shall . . . the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention". The fact, for instance, that forced labour is already totally prohibited in a country does not render useless the ratification of the relevant Conventions,

which are designed to ensure the abolition of such labour and guarantee against its imposition at any future time. Moreover, several countries had emphasised, when ratifying the Forced Labour Convention, 1930 (No. 29), that they conceived this formal acceptance of its obligations as an act of international solidarity, so as to manifest their support for all national and international measures against compulsion to work.

314. Ratification as a gesture of international solidarity may also take place when the terms of a Convention are deemed to be of no direct interest, having regard to national conditions. It is in this spirit, according to the report of one European country, that it is intended to ratify the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).

315. The utility of ratifications which intervene in the circumstances described above is also due to their potential effect in maintaining national law at the level set by the Convention.

316. However, the present survey has above all confirmed the paramount value of ratifications made possible through changes in the national law and practice. Every chapter above contains examples of measures of this kind which are now under way or under consideration with a view to giving effect to the seventeen Conventions. Even if these measures will not always lead to ratification, they illustrate in a strikingly concrete manner attempts at the improvement of the conditions of labour which the Preamble of the ILO Constitution has, since 1919, proclaimed as the basic objective of the Organisation.

317. The Conventions which the Organisation has framed over its first half-century were adopted with this objective in mind. The constitutional requirements to bring the Conventions before the competent national authorities and to report to the ILO on their implementation are intended to ensure that due consideration is given to the instruments by the member States. The Committee welcomes therefore the large body of information made available by governments in connection with the present survey as positive evidence that the Conventions selected for review are receiving careful attention in many countries. This interest seems especially noteworthy in the light of the steadily expanding scope of the International Labour Code.

318. Another general point which bears stressing here concerns the gradual adjustment of a country's law and practice to the international standards. The pace and timing of implementation can only be decided by the competent national bodies in the light of economic conditions, administrative possibilities, social priorities, etc. It is in this sphere also that the active interest and participation of employers' and workers' representatives can make an essential contribution. As already indicated above, tripartite bodies are called upon to play a role in certain countries when decisions have to be reached on the implementation of Conventions and such a joint approach at the national level forms a logical sequence to the process of tripartite discussion which precedes the adoption of ILO standards by the Conference.

319. This role of employers and workers is, moreover, formally recognised in the constitutional requirement to communicate copies of the reports under article 19 to their representative organisations. While the latter do not appear to have commented directly on the information in the reports, the Committee learned with interest that one workers' organisation, in a memorandum addressed to its government¹,

¹ *Revue Syndicale Suisse* (monthly publication of the Swiss Federation of Trade Unions), May 1968, pp. 141-151.

specifically referred to the report on several unratified ILO Conventions and made suggestions regarding the action to be taken on them.

320. If the Committee has attempted in these general conclusions to bring out the positive elements emerging from the survey this was not because it underestimates in any way the obstacles to ratification mentioned in the reports but because the Governing Body's decision to undertake such a survey was conceived as a starting point for further progress. At the same time the Committee feels bound, as one of the supervisory organs of the ILO, to reiterate the overriding importance it attaches to the obligations which flow from the act of ratification. In deciding on this step governments not only enter upon a commitment to "take such action as may be necessary to make effective the provisions of a Convention" but they also accept responsibility for reporting regularly on its application and for taking account of the observations and requests formulated by the supervisory organs. Such comments may cover both the legislative and practical measures required to give full effect to the instrument and the Committee has frequently stressed in the past that the effective application of Conventions in practice should be a matter of constant concern.

321. Any studies or plans for additional ratifications should therefore have regard also to the administrative facilities available at the national level to ensure a maximum of compliance with the relevant laws and regulations. The existence of well-organised labour inspection services thus assumes added importance and this fact was recognised by the Governing Body in including the Labour Inspection Convention, 1947 (No. 81) in the present survey. It is for the same reason that shortly after the adoption of this instrument, some two decades ago, the Committee expressed the hope that "the great majority of countries will, before long, find it possible so to organise their systems of labour inspection as to enable them to ratify this Convention".¹ The Committee therefore welcomes the fact that seventy States are now bound by this instrument, most of them having accepted its obligations in respect of both industrial and commercial workplaces. For the reasons just mentioned the Committee reiterates the hope that more and more governments will maintain labour inspection systems for industry and commerce permitting the full acceptance and application of this basic Convention.

322. Another element to be borne in mind in working for the fuller implementation of certain Conventions is the availability of technical assistance with a view to overcoming practical difficulties. In several cases governments specifically referred to this possibility in their reports, e.g. on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the Employment Policy Convention, 1964 (No. 122). The Committee has noted such indications with interest, because they illustrate a concrete way in which the ILO's operational and standard-setting activities can prove mutually beneficial to each other.

323. In the case of the Employment Policy Convention another interesting point requires mention in the present conclusions. This instrument, together with its corresponding Recommendation, provides a point of departure for the World Employment Programme which, the Committee understands, is being launched on the occasion of the ILO's Fiftieth Anniversary Year. Widespread action on the above Convention will therefore serve to strengthen the impact of this global Programme and of its components for the major regions of the world.

¹ RCE, 1953, p. 4.

324. Any efforts to achieve compliance with a given Convention must of course take full account of the particular circumstances and difficulties of a given country and the Committee's findings have shown the great variety of these circumstances and confirmed the need for a realistic approach suited to national conditions. Here, the value of ILO Conventions can be twofold. Firstly, and leaving aside the question of ratification, the terms of an instrument may provide practical guidance in defining objectives and policies. Even if it proves ultimately impossible to carry out an instrument in its entirety, the Convention will have served the essential purpose of improving labour conditions, referred to above. Secondly, the concept of phased implementation has emerged as a basic feature of many of the instruments framed by the International Labour Conference. Several of the Conventions dealt with in the present survey are based on this principle, such as those on equal remuneration, discrimination in employment, basic aims and standards of social policy, and employment policy. As pointed out in the relevant chapters, such Conventions leave a great deal of latitude to governments in deciding on the methods and timing of implementation. In the case of other instruments such as those on minimum standards and equal treatment in the field of social security, the Conference has also attempted to introduce a degree of flexibility so as to facilitate their acceptance by as broad a cross-section of the Organisation's expanding membership as possible.

325. Thus, as the ILO enters its second half-century of existence, this survey of seventeen key Conventions confirms two definite trends: at the international level, the range and content of the International Labour Code have further expanded and efforts have been made to develop techniques facilitating the gradual implementation of ratified Conventions; at the national level, measures tending towards fuller compliance with Conventions and, where possible, their ratification testify to the continued vitality of the Organisation's standard-setting activities.

326. Because the Committee's mandate requires it principally to dwell on difficulties and shortcomings in the application of Conventions, it welcomes the opportunity afforded by this special survey to assess the broader effects of the instruments adopted by the International Labour Conference. For the findings above bear witness to the efforts made by many countries, as ILO Members, to give practical meaning to the labour and social standards which are the fruit of five decades of international co-operation in the social field.

327. While the Governing Body intended this Fiftieth Anniversary survey to focus attention on a limited, though important, group of Conventions, the Committee considers that the main conclusion to emerge is of much more general validity. The influence of Conventions cannot be expressed merely in terms of ratifications, even if these now total over 3,400. As the Committee has stressed on previous occasions, the value of Conventions and Recommendations lies in their day-to-day effect on working and living conditions around the world. Viewed in this broader context, the present survey has not only helped to pinpoint a number of cases where further ratifications are impending or possible but has also brought to light tangible new evidence that, even in the absence of a formal commitment, ILO standards will continue to guide and influence the social policy of many countries in the years ahead.

Appendix. Reports Requested and Reports Received under Article 19 of the Constitution

States	Conventions																	Re-ports re-quested	Re-ports received
	87	98	29	105	111	100	117	81	88	122	26	99	95	102	118	59	103		
Afghanistan	x	x	x	R	x	x	x	x	x	x	x	x	R	x	x	x	x	15	15
Algeria	R	R	R	R	—	R	—	R	R	—	—	R	R	—	—	—	—	9	—
Argentina	R	R	R	R	R	R	x	x	R	R	x	x	R	x	x	x	x	7	7
Australia *	x	x	R	R	R	x	x	x	x	R	x	x	x	x	x	x	x	13	13
Austria	R	R	R	R	R	x	R	x	R	x	x	R	R	x	x	x*	x	9	9
Barbados *	R	R	R	R	R	x	x	x	R	x	x	R	x	R	x	x	x	10	10
Belgium	R	R	R	R	R	x	R	x	R	R	x	R	x	R	x	x	x	7	7
Bolivia	R	—	x	x	x	—	x	—	x	x	x	R	x	x	x	x	—	15	11
Brazil	x	R	R	R	x	R	R	R	R	R	R	R	R	x	R	x	R	3	3
Bulgaria	R	R	R	x	R	R	x	R	x	R	x	x	R	x	x	R	x	8	8
Burma	R	x	R	x	x	x	x	x	x	x	x	R	x	x	x	x	x	14	14
Burundi	—	—	R	R	R	—	—	—	—	—	—	—	—	—	—	—	—	14	—
Byelorussia	R	R	R	x	R	x	x	x	x	x	x	R	x	x	x	R	R	8	8
Cameroon *	R	R	R	R	x	x	x	R	x	x	R	x	R	x	x	x	x	10	10
Canada	x	x	x	R	R	x	x	x	R	R	R	x	x	x	x	x	x	12	12
Central African Republic	R	R	R	R	R	R	R	R	R	—	R	R	R	—	R	—	—	4	—
Ceylon *	x	x	R	x	x	x	x	R	x	x	x	R	x	x	x	x	x	14	14
Chad	R	R	R	R	x	R	—	R	—	—	R	—	R	—	—	—	—	8	—
Chile	x	x	R	x	x	x	x	x	x	x	R	R	x	x	x	x	x	14	14
China	x	R	x	R	R	R	R	R	x	x	R	R	x	x	R	x	x	7	7
Colombia	x	x	R	R	R	R	x	R	R	x	R	R	R	x	x	x	x	8	8
Congo (Brazzaville)	R	—	R	—	—	—	—	—	—	—	—	R	—	—	—	—	—	13	—
Congo (Kinshasa)	x	x	R	x	x	x	R	R	x	x	x	R	x	x	R	x	x	12	12
Costa Rica	R	R	R	R	R	R	x	R	R	R	R	x	R	R	x	x	x	5	5
Cuba	R	R	R	R	R	R	x	R	R	R	—	R	R	R	x	x	R	4	3
Cyprus	R	R	R	R	R	R	—	R	R	R	x	R	x	R	x	x	—	8	6
Czechoslovakia . .	R	R	R	x	R	R	x	x	R	x	R	x	R	x	x	x	x	9	9
Dahomey	R	R	R	R	R	R	x	x	x	x	x	R	x	R	x	x	x	9	9
Denmark	R	R	R	R	R	R	x	R	x	x	x	x	x	R	x	x	x	9	9
Dominican Rep. . .	R	R	R	R	R	R	x	R	R	x	x	R	x	x	x	x	x	8	8
Ecuador	R	R	R	R	R	R	x	x	x	x	x	R	—	R	x	x	R	8	7
El Salvador	—	—	—	R	—	—	—	—	—	—	—	—	—	—	—	—	—	16	—
Ethiopia	R	R	x	x	R	x	x	x	R	x*	x	x	x	x	x	x	x	13	13
Finland	R	R	R	R	x	R	x	x	R	x	x	x	x	x	x	x	x	10	10
France	R	R	R	x	x	R	x	x	R	x	x	R	R	x	x	x	x	8	8
Gabon	R	R	R	R	R	R	x	x	x	x	R	R	R	x	x	—	x	8	7
Federal Republic of Germany	R	R	R	R	R	R	x	R	R	x	R	R	x	R	x	x	x	6	6
Ghana	R	R	R	R	R	R	R	R	R	x	R	x	x	x	x	R	x	6	6
Greece	R	R	R	R	R	x	x	x	R	R	x	x	R	R	x	x	x	9	9
Guatemala	R	R	x	R	R	x	x	R	R	x	x	R	R	x	R	x	x	6	6
Rep. of Guinea . .	R	R	R	R	R	x	R	R	R	x	R	R	R	x	R	x	x	4	4
Guyana	R	R	R	R	R	x	x	x	R	x	x	R	x	x	x	x	x	10	10
Haiti	—	R	R	R	R	—	R	—	—	—	—	—	—	—	—	—	—	12	—
Honduras	R	R	R	R	R	R	—	—	—	—	—	—	R	—	—	—	—	10	—
Hungary	R	R	R	x	R	R	x	x	—	x	R	x	—	x	x	x	R	9	9
Iceland	R	R	R	R	R	R	—	—	—	—	—	—	—	R	—	—	—	10	—

THE RATIFICATION OUTLOOK AFTER FIFTY YEARS

States	Conventions																	Re-ports re-quested	Re-ports received
	87	98	29	105	111	100	117	81	88	122	26	99	95	102	118	59	103		
India	x	x	R	x	R	R	x	R	R	x	R	x	x	x	R	x	x	10	10
Indonesia	x	x	R	R	R	R	x	x	x	x	x	x	x	x	x	x	x	14	14
Iran	x	x	R	R	R	R	x	R	x	—	R	x	x	x	x	x	x	14	11
Iraq	x	R	R	R	R	R	—	R	R	—	R	x	R	x	x	R	x	7	5
Ireland	R	R	R	R	R	x	x	R	R	x	R	R	—	x	R	R	x	8	7
Israel	R	R	R	R	R	R	R	R	R	x	x	x	R	R	R	R	x	5	5
Italy	R	R	R	R	R	R	R	R	R	x	R	x	R	R	R	R	x	3	3
Ivory Coast *	R	R	R	R	R	R	x	x	x	x	R	R	R	x	x	x	x	8	8
Jamaica	R	R	R	R	R	x	x	R	R	x	x	R	x	x	x	x	x	10	10
Japan	R	R	R	R	x	R	R	R	R	x	x	x	x	x	x	x	x	11	11
Jordan	x	R	R	R	R	R	x	R	x	x	R	x	x	x	x	R	x	9	9
Kenya	x	R	R	R	R	x	x	R	R	x	x	x	x	x	x	R	x	10	10
Kuwait	R	x	R	R	R	x	R	R	x	x	x	x	x	x	x	x	x	11	11
Laos	—	—	R	—	—	—	—	—	—	—	—	—	—	—	—	—	—	16	—
Lebanon	—	—	—	—	—	—	—	R	—	—	R	—	—	—	—	—	—	15	—
Lesotho	R	R	R	x	x	x	x	x	x	x	R	x	x	x	x	x	x	13	13
Liberia	R	R	R	R	R	R	—	—	—	—	—	—	—	—	—	—	—	12	—
Libya	—	R	R	R	R	R	—	—	R	—	—	—	R	—	—	—	—	10	—
Luxembourg	R	R	R	R	x	R	x	R	R	x	R	x	x	R	x	R	x	7	7
Malagasy Rep.	R	—	R	—	R	R	R	—	—	—	R	—	R	—	R	—	—	8	—
Malawi	x	R	x	x	R	R	x	R	x	x	R	R	x	x	x	x	x	11	11
Malaysia	x	R	R	R	x	x	x	R	x	x	x	x	R	x	x	x	x	12	12
Rep. of Mali	R	R	R	R	R	R	x	R	x	x	R	x	R	x	x	x	x	8	8
Malta	R	R	R	R	R	x	x	R	R	x	R	x	R	x	x	x	x	8	8
Islamic Rep. of Mauritania	R	—	R	x	R	—	—	R	—	—	R	—	R	R	R	—	x	9	2
Mexico	R	x	R	R	R	R	x	x	x	x	R	R	x	x	x	x	x	8	8
Morocco	x	R	R	R	R	x	x	R	x	x	R	R	x	x	x	x	x	10	10
Nepal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	17	—
Netherlands	R	x	R	R	x	x	x	R	R	R	R	R	R	R	R	x	x	6	6
New Zealand	x	x	R	R	x	x	x	R	R	x	R	R	x	x	x	R	x	9	9
Nicaragua	R	R	R	R	R	R	x	x	x	x	R	x	x	x	x	x	x	10	10
Niger *	R	R	R	R	R	R	R	x	x	x	R	x	R	x	x	x	x	7	7
Nigeria	R	R	R	R	x	x	x	R	R	x	R	x	R	x	x	R	x	8	8
Norway	R	R	R	R	R	R	—	x	R	x	R	x	R	x	R	R	x	3	2
Pakistan	R	R	R	R	R	x	x	R	x	x	x	x	x	x	x	R	x	10	10
Panama	R	R	R	R	R	R	—	—	—	—	—	—	—	—	—	—	—	10	—
Paraguay	R	R	R	R	R	R	R	—	R	—	R	R	R	—	—	R	—	4	—
Peru	R	R	R	R	—	R	—	R	R	R	R	R	—	R	—	R	—	5	—
Philippines	R	R	x	R	R	R	x	x	R	—	x	R	R	R	—	R	x	8	5
Poland	R	x	R	R	R	R	—	x	x	x	R	x	x	R	—	—	x	9	6
Portugal*	x	R	R	R	R	R	x	R	x	x	x	x	x	x	x	x	x	10	10
Rumania*	R	R	R	x	x	R	x	x	x	x	x	x	x	x	x	x	x	13	13
Rwanda	x	x	x	R	x	x	x	x	x	x	R	x	x	x	x	x	x	15	15
Senegal	R	R	R	R	R	R	R	R	x	R	R	R	R	R	x	x	x	4	4
Sierra Leone	R	R	R	R	R	R	x	R	R	x	R	R	R	x	x	R	x	5	5
Singapore	x	x	R	R	x	x	x	R	R	x	x	x	x	x	x	x	x	12	12
Somali Rep.	x	x	R	R	R	R	x	x	x	x	x	x	R	x	x	x	x	13	13
Spain	x	x	R	R	R	R	x	R	x	x	R	x	x	x	x	x	x	8	8
Sudan *	x	R	R	x	x	x	x	x	x	x	R	x	x	x	x	x	x	14	14
Sweden	x	x	R	R	R	R	x	R	R	R	x	x	x	R	R	x	x	6	6
Switzerland	x	x	R	R	R	R	x	R	R	x	R	x	x	x	x	x	x	11	11
Syrian Arab Rep.	R	R	R	R	R	x	R	R	R	x	R	R	R	x	x	R	x	4	4
Tanzania	x	R	R	R	x	x	x	R	R	x	R	x	R	x	x	R	—	9	9
Thailand	—	—	R	—	—	—	—	—	R	R	—	—	—	—	—	—	x	14	—
Togo	R	x	R	x	x	x	x	x	x	x	R	x	—	x	x	x	R	13	13

REPORT OF THE COMMITTEE OF EXPERTS

States	Conventions																	Re-ports re-quested	Re-ports received
	87	98	29	105	111	100	117	81	88	122	26	99	95	102	118	59	103		
Trinidad and Tobago . .	R	R	R	R	—	—	—	—	—	—	—	—	—	—	—	—	—	13	—
Tunisia	R	R	R	R	R	R	—	R	R	R	—	R	R	R	x	R	x	4	2
Turkey	x	R	x	R	R	x	x	R	R	x	R	x	x	x	x	x	x	10	10
Uganda	x	R	R	R	R	x	x	R	x	R	R	x	x	R	x	x	x	10	10
Ukraine	R	R	R	x	R	R	x	x	x	R	x	x	x	R	x	R	R	8	8
USSR *	R	R	R	x	R	R	x	x	x	R	x	x	x	R	x	x	R	8	8
United Arab Rep.	R	R	R	R	R	R	—	R	R	—	R	—	R	R	—	—	—	7	—
United Kingdom .	R	R	R	x	x	x	x	R	R	R	R	R	R	R	R	x	x	6	6
United States . .	x	x	x	x	x	x	—	x	x	x	x	x	x	x	x	x	x	17	16
Upper Volta . . .	R	R	R	—	R	x	—	x	x	x	x	R	x	x	—	x	x	11	8
Uruguay *	R	R	x	R	x	x	x	x	x	x	R	R	R	x	x	R	R	9	9
Venezuela	x	R	R	R	x	x	x	R	R	x	R	x	x	x	x	x	x	11	11
Viet-Nam	x	R	R	x	R	x	x	R	x	x	R	x	x	x	x	x	x	12	12
Yemen	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	17	—
Yugoslavia * . . .	R	R	R	x	R	R	x	R	R	—	x	x	x	R	x	x	R	8	7
Zambia	x	x	R	R	x	x	R	x	x	x	R	x	x	x	—	x	x	13	12
Total. . .																		1 116	844

R = Convention ratified.

x = Report received.

* = Reports received too late to be summarised in Report III (Part 2).