

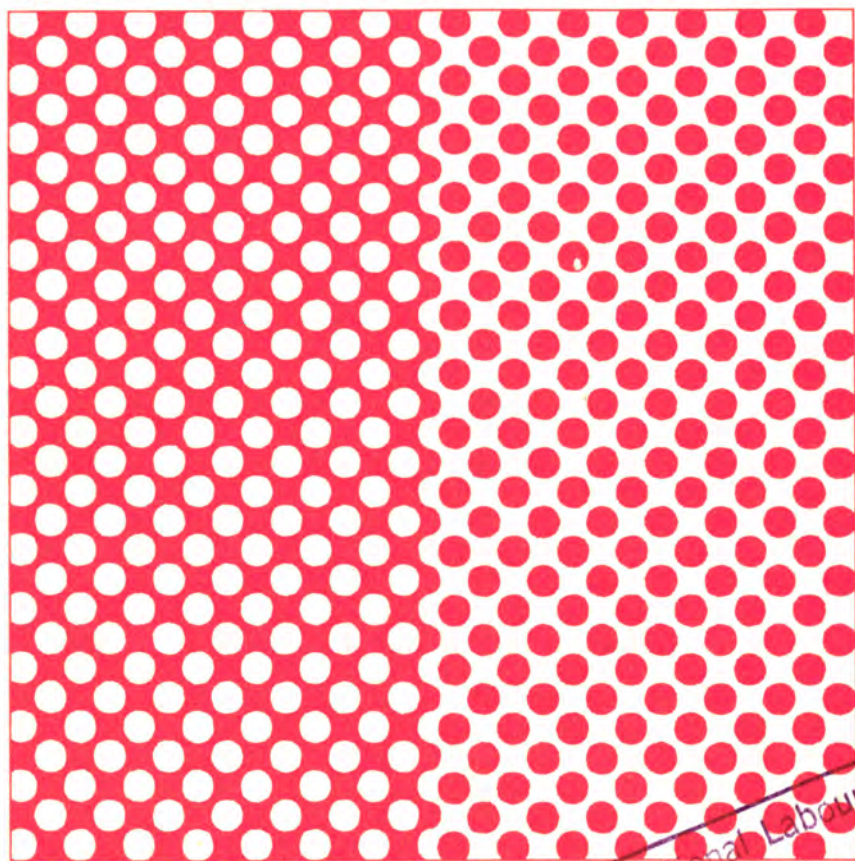
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EQUALITY OF TREATMENT (Social Security)

General Survey by the Committee of Experts
on the Application of Conventions and Recommendations

International Labour Conference

63rd Session 1977



International Labour Office Geneva



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International Labour Conference
63rd Session 1977

Report III
(Part 4 B)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

General Survey of the Reports
relating to the Equality of Treatment
(Social Security) Convention,
1962 (No. 118)

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Recommendations (Articles 19, 22 and 35 of the Constitution) - Volume B



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CONTENTS

	Page	Paragraphs
INTRODUCTION	1	
1.1. Background to the survey	1	1-4
1.2. Terms of Convention No. 118	1	5-7
1.3. States which have ratified Convention No. 118 and branches in respect of which the obligations of this Convention have been accepted	2	8-9
1.4. Other ILO instruments concerning equality of treatment in the field of social security	3	10-11
1.5. The 1969 general survey of the Committee of Experts	3	12-13
1.6. Information available	4	14
Footnotes to Introduction	4	
CHAPTER I. <u>General considerations</u>	5	
2.1. Definitions	5	15-28
2.2. Branches of social security covered by the Convention	8	29-34
2.3. Ratification and notification	8	35-43
2.4. Persons covered	11	44-52
Footnotes to Chapter I	13	
CHAPTER II. <u>Equality of treatment of nationals and non-nationals</u>	19	
3. <u>The principle of equality of treatment</u>		
3.1. Concept and scope	19	53-62
- Equality of treatment and territory	19	54
- Equality of treatment and national legislation	19	55
- Coverage and right to benefits	19	56-58
- Condition of reciprocity	20	59-60
- Survivors	20	61
- Retortion clause	21	62
3.2. Equality of treatment in national legislation and practice	21	63-69
4. <u>Condition of residence</u>		
4.1. Concept and scope	22	70-78
- Place of residence	22	71-72
- Retortion clause	22	73

	Page	Paragraphs
- Length of residence	22	74-76
- Transitional schemes	23	77
- Cumulation	23	78
4.2. The condition of residence in national law and practice	23	79-84
Footnotes to Chapter II	24	
CHAPTER III. <u>Payment of benefits to beneficiaries (or in respect of children) resident abroad</u>	45	
5. <u>Payment of benefits abroad</u>		
5.1. Concept and scope	45	85-94
- Benefits covered	45	87
- Beneficiaries and condition of reciprocity	46	88
- Place of residence	46	89
- "Non-contributory" benefits	46	90
- Transitional schemes	46	91
- Relationship between Articles 5 and 8	46	92
- Relationship between Articles 5 and 4	46	93-94
5.2. Payment of benefits abroad in national law and practice	47	95-100
6. <u>Payment of family allowances in respect of children resident abroad</u>		
6.1. Concept and scope	48	101-109
- Benefits covered	48	103
- Beneficiaries and condition of reciprocity	48	104
- Place of residence	48	105
- "Non-contributory" benefits	49	106
- Relationship between Articles 6 and 4	49	107
- Nature of the obligation	49	108
- Payment abroad	49	109
6.2. Payment of family allowances in respect of children resident abroad in national law and practice	49	110-115
Footnotes to Chapter III	50	
CHAPTER IV. <u>Maintenance of rights</u>	59	
7. <u>Concept and scope</u>		116-121
- Nature of the obligation	59	117
- Persons and rights covered	59	118
- Branches covered	59	119
- Totalisation of periods	59	120
- Cost of benefits	60	121
Footnotes to Chapter IV	60	

	<u>Page</u>	<u>Paragraphs</u>
CHAPTER V. <u>Miscellaneous provisions</u>	62	
8. <u>Methods of giving effect to Articles 5 and 7</u>		122-125
- Choice of methods	62	123
- Relationship between Article 8 and Articles 5 and 7	62	124
- The 1935 Convention (No. 48)	62	125
9. <u>Possible derogations</u>		126-127
10. <u>Mutual administrative assistance</u>		128-129
11. <u>Date of application of the Convention</u>		130-132
- Benefits payable prior to the coming into force of the Convention	63	131
- Benefits payable after the coming into force of the Convention	64	132
Footnotes to Chapter V	64	
CONCLUSIONS	66	
The spirit of Convention No. 118	66	133-136
Basic subjects dealt with in Convention No. 118	66	137-143
Ratification prospects	68	144-146
Difficulties encountered	68	147-153
The current relevance of Convention No. 118	70	154-156
Footnotes to Conclusions	70	
APPENDIX I. Equality of Treatment (Social Security) Convention, 1962 (No. 118): Chart of ratifications and undertakings up to 30 March 1977	74	
APPENDIX II. Reports considered	76	
APPENDIX III. Index of States and Non-Metropolitan Territories mentioned	79	

ABBREVIATIONS

OB	Official Bulletin (ILO)
RP	Record of Proceedings of the Conference
TLC	International Labour Conference
RCE	Report of the Committee of Experts on the Application of Conventions and Recommendations
ILR	International Labour Review (ILO)
LS	Legislative Series (ILO)

INTRODUCTION

1.1. Background to the 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 194th Session to request governments which had not ratified the Equality of Treatment (Social Security) Convention, 1962 (No. 118),¹ or which had ratified it while accepting its obligations only in respect of one or several of the branches of social security covered by this Convention, to report in 1976 on the position of their law and practice with respect to the standards laid down in this instrument. These reports, together with those supplied under article 22 of the Constitution, by those countries which have ratified the Convention for the branches accepted, have afforded the Committee of Experts the opportunity to carry out a general survey, in accordance with its usual practice, of the situation in the fields covered by this Convention, in both ratifying and non-ratifying States.

2. This is the first time that a general survey is being carried out on the 1962 standard concerning equality of treatment of nationals and non-nationals in social security.

3. In examining the question to which this survey is devoted it should be borne in mind that it falls under the broader heading of protection for workers employed in countries other than their own, proclaimed as one of the objectives of the ILO in the Preamble to its Constitution, and considered from its inception to be one of its essential functions. It was in fact already specified in Article 427 of the Treaty of Versailles (Part XIII), which proclaimed the general principles included in the initial text of the ILO Constitution, that the standard set by law in each country with respect to conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident there, and at the very first session of the International Labour Conference, held in Washington in 1919, a Recommendation was adopted concerning reciprocity of treatment of foreign and national workers in general.²

4. The right to equality of treatment of nationals and non-nationals in the field of social security is thus a fundamental principle internationally recognised in instruments with world-wide scope. It is likewise recognised in multilateral and bilateral instruments whose scope is limited to certain regions or groups of countries.

1.2. Terms of Convention No. 118³

5. This Convention, based on the principle of reciprocity, requires each member State for which it is in force to grant within its territory treatment equal to that granted 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 for which the member State has accepted the obligations of the Convention (Articles 1, 3 and 4). As far as benefits are concerned, it must be accorded without any condition of residence, save in cases where the grant of certain benefits payable under "non-contributory" schemes (in the meaning of paragraph 6(a) of Article 2) 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 (Article 4).

6. 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 (Article 2).

7. The Convention (which does not apply to special schemes for civil servants or for war victims, or to public assistance) requires that the provision of certain benefits (invalidity, old-age and 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 (Articles 5 and 10). Similarly, the grant of family allowances, both to a State's own nationals and to the 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 (Article 6). 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 (Article 7).

1.3. States which have ratified Convention No. 118
and branches in respect of which the obligations
of this Convention have been accepted

8. The Convention entered into force on 25 April 1964 and up to March 1977 has been ratified by 32 States; furthermore, it has been declared applicable without modifications for one non-metropolitan territory. Two States have accepted the obligations in respect of only one branch; three States, two branches; five States, three branches; seven States, four branches; five States, five branches; two States, six branches; four States, seven branches; one State, eight branches; and three States, nine branches (see the Chart of ratifications in Appendix I).

9. Most of the 32 ratifying States have accepted the obligations of this Convention in respect of branch (g), employment injury benefits (26 acceptances); other branches have been accepted in varying degrees: branch (a), medical care: 17 acceptances; branch (b), sickness benefit: 18 acceptances; branch (c), maternity benefit: 23 acceptances; branch (d), invalidity benefit: 15 acceptances; branch (e), old-age benefit: 15 acceptances; branch (f), survivors' benefit: 17 acceptances; branch (h), unemployment benefit: 7 acceptances; branch (i), family benefit: 13 acceptances.

1.4. Other ILO instruments concerning equality of treatment in the field of social security

10. The adoption of Convention No. 118 in 1962 was in reality merely a step - though undoubtedly the most important one - in the lengthy process of progressive standard setting that began in 1919. Among the ILO instruments which embodied the principle of equality of treatment in the field of social security, mention should be made of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the aim of which is to secure equality of treatment for foreign workers and their dependants on the basis of reciprocity between ratifying countries, without any condition as to residence (Article 1, paragraphs 1 and 2) (it is complemented by Recommendation No. 25, bearing the same title and of the same date); the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48) (Article 2, paragraph 1, and Article 10, paragraph 1); the Migration for Employment Convention (Revised), 1949 (No. 97) (Article 6, paragraph 1, clause (b)).

11. The principle of equality of treatment is also embodied in other general Conventions; for example, the Unemployment Convention, 1919 (No. 2) (Article 3); the Unemployment Provision Convention, 1934 (No. 44) (Article 16); the Maternity Protection Convention, 1919 (No. 3) (Article 2); and the Maternity Protection Convention (Revised), 1952 (No. 103) (Article 2);⁴ the six 1933 Conventions on old-age, invalidity and survivors' insurance in industry and agriculture (Nos. 35 to 40) (Conventions Nos. 35 and 36: Articles 12 and 21; Conventions Nos. 37 and 38: Articles 13 and 22; Conventions Nos. 39 and 40: Articles 15 and 24); the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (Article 11), and the Social Security (Seafarers) Convention, 1946 (No. 70) (Article 5) - but the Seafarers' Pensions Convention, 1946 (No. 71) authorises member States to provide for exceptions in respect of persons who are not nationals of that country (Article 2, paragraph 2, clause (k)), the Social Security (Minimum Standards) Convention, 1952 (No. 102) (Article 68, paragraphs 1 and 2);⁵ the Employment Injury Benefits Convention, 1964 (No. 121) (Article 27); the Medical Care and Sickness Benefits Convention, 1969 (No. 130) (Article 32); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (Article 10) which is complemented by the Migrant Workers Recommendation, 1975 (No. 151).

1.5. The 1969 general survey of the Committee of Experts⁶

12. In accordance with article 19 of the Constitution of the International Labour Organisation, the Governing Body of the International Labour Office decided in 1967 to request governments to report, the following year, on the ratification prospects and difficulties as regards a list of 17 Conventions chosen from the most important instruments adopted by the ILO Conference over the years, and Convention No. 118 was one of the instruments chosen.

13. In the 1969 survey the Committee tried to identify the main difficulties preventing or delaying ratification of this Convention, and to examine its ratification prospects.⁷ Now these questions will be examined again in drawing conclusions from reports sent by governments almost ten years later.

1.6. Information available

14. The present survey is based on the reports supplied under article 19 of the ILO Constitution by countries which have not ratified Convention No. 118 and those which have ratified it while accepting its obligations in respect of one or more of the branches of social security it covers, as well as those supplied under article 22 of the Constitution by countries which have ratified the Convention. The total number of reports supplied under article 19 is 113 (94 States - representing 79 per cent of the reports requested - and 19 territories). In Appendix II to this survey details are given of the countries which have supplied these reports, and of the countries with respect to which information was made available in the reports supplied under article 22 of the Constitution. The total number of countries whose reports have been taken into account in the preparation of this general survey is 100. In addition to the information given in these reports, the Committee has examined national legislation and the relevant international treaties. Account has also been taken of the observations received from employers' and workers' organisations to which the reports of governments were communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.

Footnotes to Introduction

¹ Referred to hereafter as "Convention No. 118".

² ILC, First Session, RP, p. 259. Reference may also be made to ILC, 45th Session, Geneva, 1961, Report VIII(1). A bibliography on the subject is to be found in ILO: Social security for migrant workers, Geneva, 1976, Appendix III, pp. 147-154.

³ For the preparatory work on this Convention, see ILC, 45th Session, Geneva, 1961, Report VIII(1) and (2), and RP, pp. 544-548, 849-859 and 904; ILC, 46th Session, Geneva, 1962, Report V(1) and (2), and RP, pp. 435-437, 454-475, 529-531, 753-766, 894-902.

⁴ As regards these two Conventions, see RCE, 1965, Maternity protection; concerning the principle of non-discrimination on the basis, inter alia, of nationality, see in particular paras. 50-55.

⁵ See RCE, 1951, Part 3, Minimum standards of social security; in particular paras. 23-24. This Convention came into force on 24 April 1955.

⁶ RCE, 1969: The ratifications outlook after fifty years: seventeen selected Conventions.

⁷ *Idem*, paras. 246-256, pp. 240-242, and paras. 258-259, p. 243.

CHAPTER I

GENERAL CONSIDERATIONS

2.1. Definitions

15. Article 1 of Convention No. 118 contains all the definitions necessary for its application.

Clause (a) "legislation"

16. This term includes "any social security rules as well as laws and regulations"; it is defined in very general terms and is designed to extend equality of treatment over the widest possible field.¹ The practical application of this definition has not given rise to any problems.

Clause (b) "benefits"

17. This term covers "all benefits, grants and pensions, including any supplements or increments", and is thus used in a very broad sense.²

18. The question has arisen in practice as to whether the Convention covers certain benefits, which, although granted within the framework of a social security system, are not considered in a country as part of social security properly speaking. For example, section 26 of Act 153 of 30 April 1969 in Italy institutes a "social pension" payable solely to Italian nationals. In reply to the Committee's comments to the effect that this benefit should be granted to the nationals of other member States in compliance with the Convention, and to refugees and stateless persons, the Italian Government replied that the benefit does not form part of social security properly so called, since it is granted independently of any occupational activity or the payment of any contributions. The Committee then pointed out that this "social pension" corresponds to the type of benefit covered by paragraph 6(a) of Article 2 of the Convention (benefits other than those the grant of which depends either on direct financial participation of the persons protected or their employer, or on a qualifying period of occupational activity). This benefit therefore cannot be excluded from the scope of the Convention.³

19. Public assistance allowances, on the other hand, are not covered by this term. During the preparatory discussions it was proposed that these be included, but the proposal was withdrawn after the rejection of a similar proposal concerning only public assistance allowances provided at the expense of the State;⁴ consequently, paragraph 2 of Article 10 of the Convention excludes public assistance from its field of application. The same provision of the Convention also excludes special schemes for civil servants and special schemes for war victims.

20. The question of "non-contributory" benefits deserves (in the meaning of paragraph 6(a) of Article 2) deserves special attention. In the proposals which it submitted to the 141st Session of the Governing Body (March 1959), the Committee of Experts on Social Security recognised, in principle, that no distinction should be made between the benefits, according as they are furnished under contributory or non-contributory schemes. However, in order to take account of the very liberal award of certain benefits under non-contributory schemes, especially where there is no qualifying period, it agreed that it would be justifiable to provide a condition of duration of residence for such benefits; this duration should be relatively brief for short-term benefits.⁵ In view of this position, governments were asked whether the proposed instrument should define non-contributory schemes and, if so, what definition or criteria they suggested.⁶ As a large majority of governments were clearly in favour of including a definition, it was agreed that non-contributory benefits be defined as "benefits which are granted independently of direct financial participation by the persons protected or their employer and of any qualifying period of occupational activity".^{7,8} It was subsequently decided to delete the definition of these benefits and all reference to them in the definition of "benefits granted under transitional schemes" and to replace "non-contributory benefits" in the text of the Convention itself, by the agreed definition.⁹

21. The distinction between "contributory" and "non-contributory" benefits is of great importance for the application of Convention No. 118, since special provisions apply as regards the latter in conjunction with ratification (Article 2, paragraph 6(a)), as regards the conditions of residence to which the application of the principle of equality of treatment may be made subject (Article 4, paragraph 2) and in respect of the payment of certain benefits abroad (Article 5, paragraph 2). In practice, it is however not always easy to determine whether a benefit should be considered as "contributory" or "non-contributory" (in the sense of paragraph 6(a) of Article 2 of the Convention).

22. A closely related problem is that of determining the contributory or non-contributory nature of certain "mixed" benefits, i.e. those of which part is contributory and part is not. It was agreed, during the preparatory work, that when a "non-contributory" benefit is granted in a mixed financing system, it is the nature of the benefit in particular - and not that of the system under which it is granted - which will determine the provisions of the Convention applicable to it.¹⁰ Similarly, when a benefit consists of contributory and non-contributory elements, it is the main element of the benefit, and not the system, which will determine the provisions applicable to it.¹¹

Clause (c) "benefits granted
under transitional schemes"

23. This term relates either to "benefits granted to persons who have exceeded a prescribed age at the date when the legislation applicable came into force, or benefits granted as a transitional measure in consideration of events occurring or periods completed outside the present boundaries of the territory of a Member". This definition was included so as to limit the scope of restrictions on equality of treatment which might be adopted with regard to benefits of this type.¹² The application of this provision of the Convention does not appear to create any practical difficulties.¹³

24. It should be added that a member State which has ratified the Convention and in which legislation exists or is adopted providing for benefits of the type referred to in Article 1(c) should under Article 2, paragraphs 6 and 7, of the Convention communicate to the Director-General of the International Labour Office when accepting the obligations of the Convention in respect of any branch of social security or when subsequently passing legislation, a statement indicating the benefits provided for by its legislation which it considers to be "benefits granted under transitional schemes".

Clause (d) "death grant"

25. This term means "any lump sum payable in the event of death". This definition corresponds to that used in multilateral social security agreements and regulations; it was included in order to clarify the term "death grants" occurring in paragraph 1 of Article 5 of the Convention, as these grants do not form a separate branch of social security, but may be granted within the framework of several of the branches mentioned in Article 2, paragraph 1, of the Convention.¹⁴ Neither the scope nor the contents of this definition has given rise to any practical problems.¹⁵

Clause (e) "residence"

26. This term refers to "ordinary residence". The definition is based on that used in Article 1, paragraph 1(b) of the Social Security (Minimum Standards) Convention, 1952, and is thus in conformity with the decision of the Conference Committee on Social Security, which especially stated that the residence conditions (laid down in paragraph 2 of Article 4 of the Convention) concerning "non-contributory" benefits (foreseen in paragraph 6(a) of Article 2 of the Convention), should not preclude short absences not involving transfers of residence (e.g. business trips, tourism, holidays).¹⁶ No practical problems have arisen with regard to the scope or contents of this definition.

Clause (f) "prescribed"

27. This term means "determined by or in virtue of national legislation" (see the definition of "national legislation" above). This is the same definition as given in Article 1, paragraph 1(a) of the Social Security (Minimum Standards) Convention, 1952.¹⁷ This definition has not given rise to any practical difficulties.

Clauses (g) "refugee" and
(h) "stateless person"

28. The first of these terms has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 adopted by the General Assembly of the United Nations; the second has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954, adopted also by the General Assembly of the United Nations. The application of these terms has not given rise to any practical problems.¹⁸

2.2. Branches of social security covered by the Convention

29. Paragraph 1 of Article 2 of Convention No. 118 lists the branches of social security in respect of which each member State may accept the obligations of the Convention: (a) medical care; (b) sickness benefit; (c) maternity benefit; (d) invalidity benefit; (e) old-age benefit; (f) survivors' benefit; (g) employment injury benefit; (h) unemployment benefit; and (i) family benefit.

30. The nine branches covered correspond to those of Convention No. 102; moreover, it was to keep them in line with the branches covered by that Convention that it was decided not to have a special clause referring to "death grants", on the understanding that such grants were by implication covered by the branches listed under (b), (f) or (g) (as the case may be) in Article 2, paragraph 1.¹⁹

31. Unlike Convention No. 102, however, Convention No. 118 does not specify a minimum level of protection for the various branches covered; this is because the objective of the latter is not to lay down minimum standards but to obtain the widest possible application of the principle of equality of treatment.²⁰ It was for this reason that it was not considered advisable to lay down conditions regarding the nature of schemes enabling the Convention to be ratified in respect of specific branches, either by referring to the standards laid down in Convention No. 102 or by drawing on the provisions of that Convention; in the case of Convention No. 118 the object is to secure general application of a fundamental principle, irrespective of the degree of development reached by particular schemes or systems.²¹

32. According to the reports received and to information in the possession of the Office, nearly all countries which have ratified the Convention possess legislation covering branches other than those in respect of which they have accepted the obligations of the Convention.²²

33. Furthermore, the survey has revealed that all member States which have transmitted reports but which have not ratified the Convention possess legislation covering one or more branches of social security to which the Convention applies. Of these States, the largest number possess legislation covering between seven and nine branches;²³ the next largest group, between four and six;²⁴ and the smallest group possesses legislation covering between one and three branches only.²⁵ Thus the relevant national legislation has attained a level of development as regards the branches covered which would appear to satisfy one of the basic conditions for ratification of the Convention.

34. As regards non-metropolitan territories for which reports have been transmitted, the largest group is that of countries that possess legislation covering between four and six branches;²⁶ the next largest group, between one and three branches;²⁷ and the smallest group between seven and nine branches.²⁸ In one case no branch is covered.²⁹ Generally speaking, therefore, although the legislation in these territories is generally less developed than the national legislation referred to above, it may also be concluded that in nearly all of them one of the conditions has been met for declaring the Convention applicable to these territories.

2.3. Ratification and notification

35. A member State which ratifies Convention No. 118 may accept its obligations in respect of any one or more of the branches of social

security covered (Article 2, paragraph 1). This highly flexible provision was included with a view to obtaining the greatest possible number of ratifications. The Social Security (Minimum Standards) Convention, 1952 (No. 102) is divided into different parts, each one corresponding to one of the main branches of social security, and it is possible to ratify the Convention in respect of certain parts only. But in the case of Convention No. 102 ratification is conditional upon acceptance of its obligations in respect of at least three branches of social security, some of which are specified. The difference between these two formulae is attributable to the fact that an instrument on equality of treatment is very different from that of a Convention laying down minimum standards, and it is considered that in the case of Convention No. 118 ratification in respect of only one of the branches covered - any one of them - should be accepted in order to have the principle of equality of treatment applied in as many countries as possible.³⁰

Branches of social security

36. The term "branches of social security" used in paragraph 1 of Article 2 of the Convention has given rise to certain problems in practice. The first of these may be summed up as follows: should the scope of these branches be determined by reference to a uniform international standard or should it be left to the discretion of each country?³¹ It would appear from the preparatory work in respect of this instrument that the Conference was not prepared to leave the determination of the matters to be covered by the various branches to the discretion of each ratifying State, but that its intention was rather that these branches should cover a range of benefits corresponding to those prescribed in related instruments laying down substantive requirements as to the protection to be afforded by these branches.³² For instance, to determine which benefits should be deemed to come under the heading of "medical care", it would be appropriate to refer to the relevant provisions of the Social Security (Minimum Standards) Convention, 1952 (No. 102). But while it may appear appropriate to refer to the provisions of relevant social security Conventions in order to determine the scope of the branches of social security mentioned in Convention No. 118, this should only be for the purpose of determining whether equality of treatment should be granted in respect of particular benefits provided for under national legislation; in no way should it imply that the range or level of benefits prescribed by national legislation in the branch of social security concerned must meet the standards laid down in these related instruments.³³

37. Another problem that has arisen is the question whether it is permissible to take into consideration, for the purposes of the application of this Convention, legislation which holds the employer directly liable and makes no provision for any contribution by the community.³⁴ The practical implications of this question are important: if such legislation were to be taken into account a considerable boost would be given to the application of the principle of equality of treatment. In the absence of any definition of the term "branches of social security" in the Convention itself, and bearing in mind its objectives, it would appear appropriate to take also into account national legislations which hold the employers directly liable when assessing application of the Convention.^{35, 36}

Legislation in effective operation

38. A Member must have legislation "in effective operation" covering its own nationals within its own territory in order to be able to accept the obligations of the Convention in respect of one or more of the branches of social security covered (Article 2, paragraph 1). This requirement was included with a view to ensuring the practice of effective reciprocity between the nationals of member States ratifying the Convention.³⁷ In this respect there is a clear difference between Convention No. 118 and the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which allows a period of three years, as from the date of ratification, for States which ratify it and which do not already possess a system, whether by insurance or otherwise, of compensation for industrial accidents to comply with their obligations to institute such a system (Article 3). The difference in the methods used in each of these two Conventions is explained by the fact that Convention No. 118 embraces all branches of social security whereas Convention No. 19 deals with only one.³⁸

39. In practice there has only been one case of a country accepting the obligations of the Convention in respect of branches for which it had no legislation; the Committee requested that appropriate steps be taken to rectify this omission.³⁹ To avoid situations of this nature, and to comply with the requirements of the Convention, a country should not accept the obligations of the Convention in respect of branches for which it does not possess legislation. On the other hand, the fact that a country's legislation is not in conformity with the provisions of the Convention in every detail need not prevent that country from accepting its obligations in respect of one particular branch.

Contents of ratification: subsequent notification

40. As a corollary to the possible acceptance in respect of one or more branches, it is stipulated that each member State must specify, in its ratification, in respect of which branch or branches of social security it accepts the obligations of the Convention (Article 2, paragraph 3). Moreover, each Member which has ratified the Convention may subsequently notify the Director-General of the ILO that it accepts the obligations of the Convention in respect of one or more branches (Article 2, paragraph 4). In this case the undertakings given in respect of this other branch, or these other branches, are deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification (Article 2, paragraph 5). The application of these provisions has given rise to no problems in practice.

41. Special provisions apply with respect to benefits other than those the grant of which depends either on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity, and benefits granted under transitional schemes. Each Member accepting the obligations of the Convention in respect of any branch of social security must notify the Director-General of the International Labour Office, where applicable, of any benefits provided for by its legislation which it considers to fall in one or other of the two categories mentioned. This communication must be made at the time of ratification in the case of the branch or branches of social security in respect of which the country concerned then accepts the obligations of the Convention; at the time of notification of acceptance of the obligations of the Convention in the case of a branch or branches of social security not

specified in the ratification; or, as regards any legislation adopted subsequently, within three months of the adoption of that legislation (Article 2, paragraphs 6 and 7, in conjunction with paragraphs 3, 4 and 5 of the same Article).

42. This communication is required for information purposes to permit an exact identification of any benefits in respect of which a Member might wish to invoke the limitations or exceptions allowed by Articles 4 and 5 of the Convention.⁴⁰ But it should not be taken to mean that a Member may decide on its own which of the benefits provided for by its legislation should be considered to be benefits of this kind under the Convention. The Member's choice in this is subject to examination by the Committee of Experts on the Application of Conventions and Recommendations.⁴¹

43. Failure to give notification at the proper time, or within the three-month time limit imposed in paragraph 7 of Article 2 of the Convention, does not invalidate subsequent notification since the notification required is purely for information purposes.

2.4. Persons covered

44. Broadly speaking, the provisions of Convention No. 118 apply to all persons covered by the national legislation relating to the branches of social security accepted by a ratifying member State. Its coverage has accordingly not been defined by reference to categories or sectors of workers, but by reference to the coverage provided by national legislation.

45. In the first place, the Convention encompasses within its scope nationals of any other Member for which the Convention is in force (Article 3, paragraph 1), as well as, in the case of survivors' benefits, the survivors of such persons, irrespective of their nationality (Article 3, paragraph 2). However, the provisions relating to the payment of certain benefits in case of residence abroad apply only to persons who are nationals of any other Member which has accepted the obligations of the Convention in respect of the relevant branch (Article 5, paragraph 1), and the provisions relating to the grant of family allowances in respect of children residing on the territory of another Member apply only to persons who are nationals of Members which have accepted the obligations of the Convention in respect of the family benefit branch (Article 6).

46. In the second place, the provisions of the Convention are applicable to refugees and stateless persons, without any condition of reciprocity (Article 10, paragraph 1; for the definition of these terms see paragraph 28 above).

47. In the third place, some provisions of the Convention are also applicable to a ratifying State's own nationals, since any Member which has accepted the obligations of the Convention must guarantee to its own nationals provision of certain benefits when they are resident abroad (Article 5, paragraph 1). Furthermore, the provisions relating to the grant of family allowances in respect of children residing on the territory of another Member must be applied by a State also to its own nationals, if it has accepted the obligations of the Convention in respect of the family benefit branch (Article 6).

48. On the other hand, Convention No. 118 does not apply to special schemes for civil servants, special schemes for war victims, or public assistance (Article 10, paragraph 2). The term "public assistance" has not been defined in the Convention, since it was

recognised during the preparatory discussions that it would be difficult to do so in a clear manner generally acceptable in an international instrument, by reason of the diversity of the conceptions which it covers in different member States.⁴²

49. Finally, the Convention does not require any Member to apply its provisions to persons who in accordance with the provisions of international instruments are exempted from its national social security legislation (Article 10, paragraph 3). The general formula used aims not only at diplomatic and consular officials but also at persons with similar status such as employees of foreign governments and officials of international organisations; it has been pointed out in this connection that the expression "international instruments" covers any international agreement, including agreements made between a State and an international organisation. This provision also authorises non-application of the terms of the Convention to foreign staff employed by diplomatic and consular personnel, when, under international agreements, they are exempted from the application of a Member's legislation, and to certain special categories of foreign workers, such as frontier workers or workers engaged in international transport, who, under social security agreements, are subject to special legislation. It should be added that the provisions of paragraph 3 of Article 10 do not affect the acquired rights, by virtue of this Convention, of the persons envisaged in this paragraph where these rights were acquired prior to the application of those provisions to the person concerned.⁴³

50. The provisions allowing for the exemption of certain categories of persons from the scope of the Convention should be narrowly interpreted on account of the goal of the Convention and the exceptional character of such provisions. In consequence, the Convention applies to those categories of workers whose exemption was decided against during the preparatory proceedings, such as the categories mentioned in the preceding paragraph, where they are not exempted by virtue of an international instrument, and in particular to non-nationals working as seafarers aboard ships of a member State.⁴⁴

Difficulties encountered in practice

51. The provisions relating to the scope of the Convention have given rise to difficulties in practice in countries which have ratified it. Most of the difficulties encountered concern the application of the provisions of the Convention to non-nationals in general, their survivors or their children;⁴⁵ in two cases, to aliens employed as seasonal workers;⁴⁶ in one case, to aliens covered by a social security scheme equivalent to the national scheme;⁴⁷ in one case, for foreign rural workers;⁴⁸ and in another case, to aliens working as seafarers.⁴⁹ In a number of cases difficulties have arisen with the application of the relevant provisions to countries' own nationals, their survivors or their children.⁵⁰ Difficulties have also been encountered with the application of the provisions of the Convention to refugees and stateless persons, and their survivors.⁵¹

52. The provisions relating to the scope of the Convention also give rise to problems for its eventual ratification or the acceptance of its obligations in respect of further branches. These problems will be considered when examining the national legislation and practice in relation with the substantive Articles of the Convention (in particular Article 3).

Footnotes to Chapter I

¹ ILC, 46th Session, Geneva, 1962, Report V(1), pp. 23-24.

² Ibid., p. 24.

³ RCE, 1976, Italy, p. 178.

⁴ ILC, 46th Session, Geneva, 1962, Report V(1), p. 5, para. 16.

⁵ ILC, 45th Session, Geneva, 1961, Report VIII(1), p. 84.

⁶ Ibid., "Questionnaire", points 10 and 11, p. 87.

⁷ Ibid., Report VIII(2), "Conclusions", point 10, p. 81.

⁸ ILC, 46th Session, Geneva, 1962, Report V(1), pp. 10-11, 24, 29.

⁹ Ibid., RP, Appendix VIII, para. 9, p. 754.

¹⁰ Ibid., Report V(1), para. 37, p. 11.

¹¹ ILC, 45th Session, Geneva, 1961, Report VIII(1), pp. 78-79.

¹² ILC, 46th Session, Geneva, 1962, Report V(1), p. 24. The restrictions in question are contained in Article 4, para. 3, which authorises special provisions in respect of benefits granted under transitional schemes. It should also be pointed out that the provisions of Article 5 (which stipulates the payment of certain benefits abroad) do not apply to benefits granted under transitional schemes.

It is useful to recall that reference to non-contributory benefits was made in the definition of benefits granted under transitional schemes in the draft Convention. This reference was subsequently deleted so that the special provisions in respect of benefits granted under transitional schemes would apply both to those paid under contributory schemes and to those paid under non-contributory schemes (ILC, 46th Session, Geneva, 1962, Report V(2), pp. 11-13), thus retaining only the criterion regarding the nature of the benefits granted to persons who were too old on the date of coming into force of the relevant legislation (RP, 46th Session, Geneva, 1962, p. 754, para. 10).

¹³ In response to a request from one government that some examples of "transitional schemes" be given, the International Labour Office stated that Part III of the Foreign Pensions Act of 25 February 1960, in the Federal Republic of Germany, provided a practical example of benefits granted as a transitional measure for events occurring or periods completed outside the existing boundaries of the territory of a Member (LS 1960 - Ger. F.R. 1, section 1, paras. 15, 16 and 17); an example of benefits granted to persons who were over a prescribed age at the date when the legislation applicable came into force is provided by a Mexican Decree of 29 December 1956 (LS 1956 - Mex. 1, section 2) (OB, Vol. XLVI, No. 3, July 1963, pp. 468-469, paras. 5 and 6).

¹⁴ ILC, 46th Session, Geneva, 1962, Report V(1), pp. 24-25.

¹⁵ Problems have arisen, on the other hand, with regard to compliance with the reciprocity obligation as regards the death grant (Article 5, para. 1, of the Convention); see below, para. 87, footnote 2.

16 ILC, 46th Session, Geneva, 1962, Report V(1), pp. 9, 10 and 25.

17 Ibid., p. 25.

18 See, however, the cases mentioned when dealing with the application of para. 1 of Article 10 of the Convention, in para. 51 below.

19 ILC, 46th Session, Geneva, 1962, Report V(2), p. 15; see also the definition of "death grants" in para. 25 above.

It was likewise decided - though for other reasons - not to include public assistance benefit in the list of branches of social security in respect of which the Convention could be ratified; see above, para. 19.

20 ILC, 45th Session, Geneva, 1961, Report VIII(2), p. 68 (Office commentary on Question 3).

21 Ibid., p. 69 (idem, Question 4).

22 The States which have ratified the Convention and which possess legislation covering branches other than those in respect of which they have accepted the obligations of the Convention, and which sent in reports for the purposes of the present study, are the following: Bangladesh: branch (b); Barbados: branch (d); Bolivia: branches (d), (e), (f), (g) and (i); Brazil: branches (h) and (i); Central African Empire: branch (f); Denmark: branches (c), (d), (e), (f) and (i); Finland: branches (c), (d), (e), (f), (h) and (i); France: branches (e) and (h); Federal Republic of Germany: branches (d), (e), (f) and (i); Guinea: branch (d) (the report states that there is no unemployment in the country); India: branches (e), (f) and (g); Ireland: branches (c), (d), (e), (f) and (g); Madagascar: branches (e), (f) and (i); Norway: branches (a), (b), (c), (d), (e), (g) and (h); Pakistan: branches (d) and (e); Sweden: branches (d), (e), (f) and (i); Surinam: branches (e) and (i); Syrian Arab Republic: branches (a), (b) and (c); Tunisia, which ratified the Convention in 1965, accepting five of its branches, namely (a), (b), (c), (g) and (i), is the only country which later accepted three further branches, namely (d), (e) and (f); only branch (h) has remained unaccepted since there is no unemployment insurance in the country.

23 The States which have not ratified the Convention and which have legislation covering between seven and nine branches are the following: Algeria: all branches except (h); Argentina: all branches except (h); Australia: all branches; Austria: all branches; Belgium: all branches; Bulgaria: all branches except (h); Byelorussian SSR: all branches except (h) (the report states that there is no unemployment in the country); Canada: all branches; Costa Rica: all branches except (h); Cuba: all branches except (h) and (i); Czechoslovakia: all branches (in respect of unemployment, the report states that there is no such thing in the country, but that certain cases of structural unemployment may arise; in such cases benefits are granted in accordance with notification No. 74/1970); Egypt: all branches except (i); El Salvador: all branches except (h) and (i); Gabon: all branches except (b) and (h); German Democratic Republic: all branches; Greece: all branches; Hungary: all branches (with the reservation that the Unemployment Act of 1957 remains in force); Iceland: all branches; Iran: all branches except (h); Iraq: all branches except (h) and (i); Japan: all branches; Luxembourg: all branches; Mali: all branches except (b) and (h); Mexico: all branches except (h) and (i); New Zealand: all branches; Panama: all

branches except (h); Paraguay: all branches except (h); Peru: all branches except (h); Poland: all branches; Portugal: all branches; Romania: all branches except (h) (the report states that there is no unemployment in the country); Spain: all branches; Switzerland: all branches; Ukrainian SSR: all branches except (h) (the report states that there is no unemployment in the country); USSR: all branches except (h) (the report states that there is no unemployment in the country); United Kingdom: all branches; United States: there is legislation corresponding to branches (a) (limited to old age at the federal level), (b) (in five States: Rhode Island, California, New Jersey, New York and Hawaii, and in Puerto Rico), (d), (e) and (f) (at federal level), (g) (in 50 states) and (h) in 50 states, Puerto Rico and the District of Columbia); Uruguay: all branches.

24 The States which have not ratified the Convention and which have legislation covering between four and six branches are the following: Burma: branches (a), (b), (c) and (g); United Republic of Cameroon: branches (c), (d), (e), (f), (g) and (i); Cyprus: branches (b), (c), (d), (e), (f) and (g); Ethiopia: branches (b), (c), (d), (e), (f) and (g); Guyana: branches (b), (c), (d), (e), (f) and (g); Haiti: branches (d), (e), (f) and (g); Jamaica: branches (d), (e), (f) and (g); Malta: branches (b), (e), (f), (g), (h) and (i); Mauritius: branches (b), (e), (g) and (i); Morocco: branches (b), (c), (d), (e), (f) and (i); Niger: branches (c), (d), (e), (f), (g) and (i); Nigeria: branches (b), (d), (e), (f) and (g); Philippines: branches (a), (b), (d), (e), (f) and (g); Rwanda: branches (c), (d), (e), (f) and (g); Senegal: branches (c), (e), (f), (g) and (i); Singapore: branches (b), (c), (d), (e), (f) and (g); Somalia: branches (a), (b), (c), (e) and (g); Sri Lanka: branches (c), (d), (e), (f) and (g); Tanzania: branches (b), (c), (d), (e), (f) and (g); Trinidad and Tobago: branches (b), (c), (d), (e), (f) and (g); Uganda: branches (d), (e), (f) and (g); Upper Volta: branches (c), (d), (e), (f), (g) and (i); Yemen: branches (a), (b), (c) and (g); and Zambia: branches (c), (d), (e), (f) and (g).

25 The States which have not ratified the Convention and which have legislation covering between one and three branches are the following: Indonesia: branch (g); Kuwait: branches (a) and (g); Liberia: branch (g); Malawi: branch (g); Malaysia: branches (a), (d) and (g); Sierra Leone: branch (g); and Thailand: branches (b), (c) and (g).

26 This group comprises the following non-metropolitan territories of the United Kingdom: Antigua: branches (b), (c), (e), (f) and (g); Bermuda: branches (a), (e), (f) and (g); Dominica: branches (b), (c), (d) and (f); Montserrat: branches (d), (e), (f) and (g); British Solomon Islands: branches (c), (e), (f) and (g); Seychelles (independent as from 29 June 1976) have legislation covering branches (a), (d), (e), (f) and (g) (and probably also (b) and (c)).

27 This group comprises the following non-metropolitan territories of the United Kingdom: Brunei: branches (c) and (g); Falkland Islands (Malvinas): branches (e), (g) and (i); Hong Kong: branches (b), (c) and (g); St. Helena: branch (g); British Virgin Islands: branch (g).

The report from Brunei also refers to the State Pensions Enactment, 1954, which provides for non-contributory invalidity and old-age benefits. It would appear, however, that such benefits should be considered as falling within the scope of public assistance (excluded from the Convention under para. 2 of Article 10) since beneficiaries have no legal entitlement (see section 5 of the Enactment).

28 This group comprises the following non-metropolitan territories of the United Kingdom: Gibraltar: all branches except (b); Guernsey: all branches; Jersey: all branches except (h); Isle of Man: all branches.

29 Norfolk Island, an Australian non-metropolitan territory.

30 ILC, 45th Session, Geneva, 1961, Report VIII(1), p. 74.

31 Under the legislation in force in Finland in 1967, part of the cost of medical supplies, laboratory and X-ray examinations, doctors' fees, etc., was reimbursed under the sickness insurance scheme, while hospital care was provided as part of the general health service financed out of public funds. Since Convention No. 118 gives no definition of "medical care", the question arose as to whether, for the purposes of this Convention, the "medical care" branch to which reference is made in Article 2 could be deemed to cover only benefits granted under sickness insurance legislation or whether, on the contrary, it extended also to general health services financed out of public funds.

32 In considering the form to be taken by a new instrument on equality of treatment in the initial report on national law and practice, the Office suggested that it "might have different parts corresponding to the nine branches laid down in the 1952 Convention ... This uniform arrangement of instruments covering the whole field of social security is advisable on both technical and practical grounds" (ILC, 45th Session, Geneva, 1961, Report VII(1), p. 74). See also: ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary on an observation made by the Government of France, p. 15, and RP, Appendix VIII, para. 12, p. 754.

33 Accordingly, the fact that a country's legislation is not developed enough to meet the requirements for ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102), in respect of the contingency in question is no obstacle to ratification of Convention No. 118 (ILC, 45th Session, Geneva, 1961, Report VIII(2), Question 3, pp. 67-68).

34 This problem has arisen, for example, in Jordan and in Madagascar. In the case of Jordan, which has accepted the obligations of the Convention in respect of branches (c), (d), (f) and (g), the only legislation in force - the Labour Code of 1960 (sections 51 and 54-67) - deals only with branches (c) and (g); the Committee has accordingly expressed the hope that a social security bill will become law shortly so as to ensure full compliance with the Convention (see RCE, 1974, individual observations, Convention No. 118, Jordan, p. 198, and RCE, 1976, general observations, Jordan, p. 32). In the case of Madagascar, which has accepted in respect of branches (b), (c), (d) and (g), the Government referred to the sickness benefit provided for in sections 35 and 36 of Ordinance No. 60-119 of 1 October 1960, which promulgated the Labour Code, as being the means of applying branch (b); the Committee took note of this reply (in a direct request made in 1968) without requesting that these benefits be provided for in legislation of a different type than that in force in that country.

35 It should be borne in mind that, while Convention No. 118 does not explicitly rule out the possibility of taking into consideration schemes based on direct employers' liability, it does provide that each Member for which it is in force shall comply with its provisions in respect of the branch or branches of social security for which it has accepted the obligations of the Convention (Article 2,

para. 2). Consequently, the benefits provided under such schemes must meet the requirements of the other provisions of the Convention.

³⁶ It should be mentioned here that recently a similar approach was adopted with respect to Convention No. 121 on the occasion of the Eighth Asian Regional Conference, held in Colombo in September-October 1975 (see Report I, Part 2, paras. 62, 65 and 80).

³⁷ ILC, 46th Session, Geneva, 1962, Report V(1), extracts from the report of the Conference Committee, para. 18, p. 6.

³⁸ ILC, 45th Session, Geneva, 1961, Report VIII(2), Question 4, in fine, p. 69.

³⁹ RCE, 1974, individual observations, Convention No. 118, Jordan, p. 198. It should be noted that this country has declared, in its report for the purpose of this general survey, that it is in the process of enacting a code for social security that would be in conformity with Convention No. 118.

⁴⁰ ILC, 45th Session, Geneva, 1961, Report VIII(1), pp. 78-79; Report VIII(2), p. 74. See also the Memorandum by the ILO to the Labour Department of the Republic of Ghana, in OB, Vol. XLVII, No. 4, Oct. 1964, pp. 394-395.

⁴¹ ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary with respect to para. 6 of Article 2, p. 16; *idem*, RP, Appendix VIII, para. 13, pp. 754-755.

⁴² ILC, 46th Session, Geneva, 1962, Report V(1), Point 5, para. 22, pp. 6-7.

⁴³ See ILC, 46th Session, Geneva, 1962, Report V(1), Point 5, para. 21, p. 6, and Article 9, p. 27; Report V(2), Office commentary (on Article 9, para. 3), p. 40; *idem*, RP, p. 759 (Appendix VIII, Article 9, para. 44).

⁴⁴ With regard to the application of the Convention to seafarers, see, in particular, ILC, 45th Session, Geneva, 1961, Report VIII(2), p. 7 (Norway); *idem*, 46th Session, Report V(1), para. 27, p. 8; Report V(2), pp. 40-43; *idem*, RP, Appendix VIII, para. 45, pp. 759-760.

In reply to a question asked by the Government of Norway with respect to the term "territory" used in para. 1 of Article 3 of the Convention, the Office expressed the opinion that "... it would appear that there is not sufficient basis for a conclusion that the Conference intended the term "territory", as used in Article 3 of the Equality of Treatment (Social Security) Convention, 1962 (No. 118), to include the ships registered in the territory of the Member concerned. This does not mean that these provisions have no relevance for foreign seafarers. The obligations of equality of treatment would appear to be applicable not only in respect of foreign seafarers who are resident in the territory of the Member concerned but also in respect of foreign seafarers who, though not resident in the territory of the Member concerned, are employed exclusively in the geographical confines of that territory including the territorial waters" (Memorandum by the International Labour Office, OB, Vol. LV, 1972, Nos. 2, 3 and 4, pp. 150-152, particularly § 9).

⁴⁵ For example, Brazil, Central African Empire, Denmark, Federal Republic of Germany, Guinea, Ireland, Israel, Italy, Madagascar, Mauritania, Netherlands, Norway, Surinam, Sweden, Syrian Arab Republic, Tunisia.

⁴⁶ For example, Ecuador, Guinea.

⁴⁷ For example, Ecuador.

⁴⁸ For example, Brazil.

⁴⁹ For example, Netherlands.

⁵⁰ For example, Brazil, Central African Empire, Denmark, Ecuador, Guinea, Ireland, Israel, Italy, Madagascar, Mauritania, Netherlands, Norway, Syrian Arab Republic, Tunisia.

⁵¹ For example, Brazil, Denmark, Italy, Netherlands, Norway, Tunisia.

CHAPTER II

EQUALITY OF TREATMENT OF NATIONALS AND NON-NATIONALS

3. The principle of equality of treatment

3.1. Concept and scope

53. The principle of equality of treatment - the cornerstone of this Convention - is proclaimed in paragraph 1 of Article 3, which stipulates that "each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention".

Equality of treatment and territory

54. Equality of treatment must be granted within the territory of each Member for which this Convention is in force. This expression, which is also used in paragraph 1 of Article 2, has not been defined in Article 1. It was inserted to make perfectly clear the extent of the obligations imposed under Articles 3 and 4 of the Convention.¹ The phrase does not imply the imposing of any condition of residence in respect of equality of treatment (cf. paragraph 1 of Article 4), but should be understood as a stipulation that there should be equality of treatment throughout the physical territory of a State in which its legislation is effectively applied to its own nationals.²

Equality of treatment and national legislation

55. The Convention calls for the granting of equality of treatment under the legislation of the Members for which the Convention is in force. The term legislation has been defined in clause (a) of Article 1 (see paragraph 16 above). It is appropriate to point out that the Convention does not require the extension of equality of treatment to benefits deriving from bilateral or multilateral social security agreements in force between two or more member States with respect to any branch for which the member States concerned have accepted the obligations of the Convention.³

Coverage and right to benefits

56. Equality of treatment is to be granted both as regards coverage and as regards the right to benefits; however, it is not intended to cover the participation of non-nationals in the

administration of social security institutions or in the functioning of consultative bodies concerned with social security.*

57. As regards coverage, the most typical forms of discrimination appear to be exclusion from coverage of non-nationals as such, conditional coverage and optional coverage, the latter being reserved for nationals only.⁵ In this connection it should be borne in mind that the principle of equality of treatment implies the abolition of discrimination based on a person's nationality. Consequently, a requirement of lawful residence in the country or of lawful authorisation to be in employment does not appear to be contrary to this principle; where such conditions are imposed the difference in treatment does not appear to be motivated by the alien status of the persons concerned but rather by their legal position under regulations governing entry into and residence in the country, or access to employment.⁶

58. The expression "right to benefits" is sufficiently clear in itself not to need explanation. The most typical forms of discrimination in this field appear to be the denial of benefits, the subjecting of benefits to certain conditions, such as reciprocity or residence, and the imposing of restrictions, essentially as concerns the establishment of benefit rights or the amount or duration of benefits, or, finally, the status of each beneficiary. As will be seen later, the Convention allows for certain limitations to the principle of equality of treatment, in particular those resulting from a condition of reciprocity (Articles 3, 5 and 6) and from a condition of residence (Article 4, paragraph 2).⁷

Condition of reciprocity

59. The concept embodied in Article 3 of the Convention is that of global reciprocity, whereby States for which the Convention is in force are required, in respect of every branch for which they have accepted the obligations of the instrument, to grant equality of treatment to the nationals of all the other States for which the Convention is likewise in force, irrespective of the branches for which those other States have accepted its obligations (in the case of Articles 5 and 6, on the other hand, the formula of "branch-by-branch" reciprocity has been adopted, the requirement of equality of treatment applying only to the branch or branches for which the States concerned have accepted these obligations).

60. The purpose of a condition of reciprocity is to safeguard a balance in the obligations, so as to encourage States to ratify the instrument; the "global reciprocity" formula was adopted to avoid placing at a disadvantage the nationals of States where social security was as yet little developed.⁸ The condition of reciprocity provided for in Article 3 of the Convention is not a requirement of reciprocity based on the protection standards of the schemes in operation; it is independent of the amount of benefits payable under the various branches in the countries in question.⁹

Survivors

61. In the case of survivors' benefits "equality of treatment shall also be granted to the survivors of the nationals of a Member for which the Convention is in force, irrespective of the nationality of such survivors" (Article 3, paragraph 2). Since the survivors of a deceased person are not always of the same nationality as that person, the provision in question was adopted to enable the benefits of

equality of treatment in respect of branch (f) in Article 2 (survivors' benefit) to be extended even to survivors who are not themselves nationals of a ratifying State, on the understanding that the term "survivor" is to be defined by relevant national legislation.¹⁰

Retortion clause

62. Nevertheless, in respect of the benefits of a specified branch of social security, a Member need not apply the provisions of paragraphs 1 and 2 of Article 3 to the nationals of another Member which has legislation relating to that branch but does not grant equality of treatment in respect thereof to the nationals of the first Member (Article 3, paragraph 3).¹¹

3.2. Equality of treatment in national legislation and practice

63. Examination of national legislations and - to the extent that the Committee was provided with relevant information - practice, shows that the principle of equality of treatment is widely applied.

64. Most of the countries which, although they have not ratified the Convention, submitted a report for this study, grant equality of treatment to nationals and non-nationals in all branches covered by their legislation.¹²

65. One group of countries which, although they have not ratified the Convention, submitted the report for this study, grant equality of treatment to nationals and non-nationals in almost all the branches covered by their legislation.¹³

66. Only a small minority of countries which, although they have not ratified the Convention, submitted a report for this study, have restrictions based on nationality which are fairly wide in scope, either because they relate to all or various branches of social security covered by the national legislation, or because they affect, at least theoretically, many categories of non-nationals.¹⁴

67. Regarding the branches of social security not accepted by countries which have ratified the Convention and which submitted a report for this study, examination of national legislation and practice shows that in most cases they grant equal treatment;¹⁵ however, there are still restrictions based on nationality in some of these countries.¹⁶

68. Equality of treatment is also widely granted in the non-metropolitan territories for which reports have been submitted for this survey.¹⁷

69. As regards the branches of social security whose obligations have been accepted, the principle of equality of treatment is applied in almost all the countries which have ratified the Convention. There remain merely problems of application regarding certain specific points on which the Committee comments individually.¹⁸

4. Condition of residence

4.1. Concept and scope

70. In addition to the condition of reciprocity, the Convention also allows for certain restrictions relating to residence that may condition the application of the principle of equality of treatment (for the definition of the term "residence", see above, paragraph 26).

Place of residence

71. As concerns the grant of benefits, equality of treatment must be guaranteed without any condition of residence (Article 4, paragraph 1). The purpose of such a stipulation is to prevent conditions of residence from operating to the detriment of non-nationals by causing them the loss of benefits in the event of migrations.¹⁹

72. This does not mean, however, that benefits must in all cases be accorded to non-nationals without any condition of place of residence, but that equality of treatment of nationals and non-nationals must not be limited by a condition of residence imposed on non-nationals alone.²⁰

Retortion clause

73. Equality of treatment as regards the grant of benefits may, however, be made conditional upon residence in respect of the benefits of a specified branch of social security, in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory (Article 4, paragraph 1, second phrase). A similar clause is to be found in paragraph 3 of Article 3 (see paragraph 62 above); the inclusion of these clauses is explained by the fact that both Article 3 and Article 4 embody a condition of global reciprocity rendering their provisions applicable to the nationals of any other Member for which the Convention is in force (the condition of reciprocity laid down in Articles 5 and 6 applies to individual branches, and is thus narrower in scope).

Length of residence

74. Convention No. 118 allows for certain restrictions on equality of treatment in relation to length of residence.²¹ Paragraph 2 of Article 4 provides that -

Notwithstanding the provisions of paragraph 1 of this Article, the grant of the benefits referred to in paragraph 6(a) of Article 2 - other than medical care, sickness benefit, employment injury benefit and family benefit - may be made subject to the condition that the beneficiary has resided on the territory of the Member in virtue of the legislation of which the benefit is due, or, in the case of a survivor, that the deceased has resided there, for a period which shall not exceed -

- (a) six months immediately preceding the filing of claim, for grant of maternity benefit and unemployment benefit;

- (b) five consecutive years immediately preceding the filing of claim, for grant of invalidity benefit, or immediately preceding death, for grant of survivors' benefit;
- (c) ten years after the age of 18, which may include five consecutive years immediately preceding the filing of claim, for grant of old-age benefit.

75. A condition of length of residence is accordingly permissible only in respect of benefits of the type referred to in paragraph 6(a) of Article 2 (i.e. benefits the grant of which does not depend either on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity), and exclusively in relation to branches (c) (maternity benefit), (d) (invalidity benefit), (e) (old-age benefit), (f) (survivors' benefit), and (h) (unemployment benefit), as listed in paragraph 1 of Article 2 of the Convention.

76. It should be pointed out that the provisions of paragraph 2 of Article 4 of the Convention should not have the effect of granting more favourable treatment to non-nationals than to nationals; the provisions specifying the maximum duration of residence that may be required should not therefore be construed as necessitating the alteration of the provisions of national legislation where they lay down identical conditions for nationals and non-nationals.²²

Transitional schemes

77. Special provisions may be prescribed in respect of "benefits granted under transitional schemes" (paragraph 3 of Article 4 of the Convention; for the definition of this phrase see paragraphs 23 and 24 above).

Cumulation

78. The measures necessary to prevent the cumulation of benefits are to be determined, as necessary, by special arrangements between the Members concerned (paragraph 4 of Article 4 of the Convention). This provision is designed to prevent the cumulation of benefits which might result from the obligation to make payments abroad;²³ Members retain full competence in this respect.²⁴

4.2. The condition of residence in national law and practice

79. This section is devoted to the national legislation and practice of those States and non-metropolitan territories to which, under their current legislation, Article 4 of the Convention would apply.

80. Most of the countries which have not yet ratified the Convention and from whom reports were received for this survey guarantee equality of treatment without any residence condition;²⁵ in some cases where there are residence conditions these are compatible with the Convention;²⁶ however, in a relatively large number of cases there are residence conditions which are not in accordance with the Convention.²⁷

81. It appears appropriate to call attention to certain legislations which, although they establish residence conditions

incompatible with Article 4 of the Convention, provide that these residence conditions will not apply when there is a reciprocity agreement or an international convention.²⁸ In principle, it would therefore be possible in such cases not to apply these residence conditions if Convention No. 118 were ratified.

82. As regards branches of social security which have not yet been accepted by countries which have ratified the Convention, it is found that in most cases there is no residence condition;²⁹ in a few cases, however, residence conditions established by the national legislation, which are incompatible with the Convention, might constitute an obstacle to acceptance of the obligations in respect of the branches concerned.³⁰

83. The legislation of almost all the non-metropolitan territories which submitted reports for this survey provides equality of treatment without any residence condition;³¹ however, in one case, there are residence conditions compatible with the Convention.³²

84. In the branches of social security for which the obligations of the Convention have been accepted, the provisions of Article 4 of the Convention are applied fully in most of the countries which ratified it; there subsist merely a few application problems regarding particular points on each of which the Committee comments separately.³³

Footnotes to Chapter II

¹ ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary, p. 20.

² It is recalled here that in reply to a request from Norway, the Office expressed the opinion that "... there is not sufficient basis for a conclusion that the Conference intended the term 'territory', as used in Article 3 of the Convention ... to include the ships registered in the territory of the Member concerned ..." (Memorandum by the International Labour Office dated 18 August 1970, in reply to a request from the Minister of Social Affairs of Norway (OB, Vol. LV, 1972, Nos. 2, 3 and 4, para. 9, p. 152)); seafarers working on ships registered in the territory of a Member but which do not enter its territory are thus not within the scope of the Convention (see also para. 50 above).

Furthermore, in reply to a question from the Netherlands with respect to the application of the Convention to certain categories of workers employed outside the national territory, the Office expressed the opinion that "... where the scope of legislation is defined by reference to the residence of the employed persons and, in certain cases, by reference to the residence (or the establishment) of their employer within the territory, the nationals of all other member States for which the Convention is in force must, in conformity with Article 3 of the Convention, be treated on an equal footing with the nationals of the country concerned for the application of these criteria of coverage of the legislation" (Memorandum by the International Labour Office, dated 2 November 1971, to the Secretary of State for Social Affairs of the Netherlands, OB, Vol. LV, 1972, Nos. 2, 3 and 4, para. 9, p. 161).

³ See, in particular, ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, para. 30, pp. 756-757. It is nevertheless recalled that in the case of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the Committee of Experts, by bearing in mind the terms of any agreements concluded by a State bound by that

Convention, together with the contents of its national legislation, in assessing the respect shown for the obligations arising out of the ratification of the Convention, succeeded in extending the scope of the instrument and in taking advantage of the progress made through bilateral and multilateral arrangements (ILC, 45th Session, Geneva, 1961, Report VIII(1), p. 73).

* ILC, 46th Session, Geneva, 1962, Report V(1), p. 16, para. 58.

⁵ ILC, 45th Session, Geneva, 1961, Report VIII(1), pp. 3-8.

⁶ The Committee has not considered to be contrary to the Convention, for example, section 39 of the Social Security Code of Guinea (Act No. 21-AN-60 of 12 December 1960, promulgated by Decree No. 103 of 31 March 1961), which provides that aliens with the status of "temporary residents" may not draw family allowances unless they hold a "foreign worker's card" (whereas aliens who are "ordinary residents" or "privileged" are entitled to these benefits).

⁷ ILC, 45th Session, Geneva, 1961, Report VIII(1), pp. 8-21.

⁸ ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, paras. 16-17, p. 755.

⁹ *Idem*, Report V(2), Office commentary, p. 21.

¹⁰ *Ibid.*, Office commentary, p. 20, and *idem*, RP, Appendix VIII, para. 19, p. 755.

There is one country - New Zealand - whose legislation respecting survivors' and family benefits excludes from the definition of the term "children", among others, any child born out of New Zealand unless certain conditions as to residence are satisfied (Social Security Act, 1964 (LS 1964 - NZ 1), as amended, ss. 21(3) (widows' benefits) and 28(1) (orphans' benefits); the same applies in s. 33 (family benefits)). The Government cited these provisions as obstacles to possible ratification. The Committee considers that, in the particular case of New Zealand, the conditions referred to regarding place of birth do not appear to be incompatible with the Convention since, firstly, these conditions are not related to nationality but to residence and, secondly, they are not conditions sine qua non, but are included in the various possible conditions for qualification. In general terms, moreover, the Committee considers that a condition as to birth in the country is not incompatible with the Convention unless its ultimate effect in actual fact would be to impose a condition as to nationality; such would be the case, for example, if a condition of this type were to be imposed in a country in which the place of birth, by virtue of the jus soli, determined nationality; the requirement as to having been born in the country would be equivalent in actual fact to requiring that the persons concerned hold the nationality of that country.

¹¹ This provision was inserted during the second discussion (ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, paras. 16-17, p. 755). It was agreed to provide for this retortion clause as part of the compromise between the advocates of "equality of treatment without any condition of reciprocity" and the advocates of "equality of treatment with a condition of reciprocity branch by branch"; the final decision was in favour of global reciprocity accompanied by this power of retortion. A similar power is conferred by para. 1 of Article 4.

¹² The countries in question are, for example, the following: Argentina: branch (a): section 6 of Act No. 18610 of 23 February

1970, establishing standards for social welfare activities (text as consolidated by Decree No. 2020 of 24 June 1971; reference is made hereafter to Act No. 18610 (consolidated text of 1971)). Branch (b): section 18 of Act No. 20744 of 11 September 1974 as modified by Act No. 21297 of 1976. Branches (c) and (i): section 1 of the consolidated text of Legislative Decree No. 18017 of 24 December 1968, respecting family allowance funds (LS 1974 - Arg. 3 C), as amended, relates to persons covered by the scope of the various funds, whose competency it has not been possible to check; however, the report states that there is no discrimination on grounds of nationality. Branches (d), (e) and (f): section 2 of the consolidated text of Legislative Decree No. 18037 of 30 December 1968, in respect of a new pension scheme for employees (LS 1974 - Arg. 3); section 2 of the consolidated text of Legislative Decree No. 18038 of 30 December 1968, in respect of a new pension scheme for self-employed persons (LS 1974 - Arg. 3 B). Branch (g): section 2 of the Industrial Accidents and Occupational Diseases Act, No. 9688 of 11 October 1915, as amended (LS 1957 - Arg. 1 C; LS 1957 - Arg. 1 B). As regards unemployment, the legislation covers only construction workers (Legislative Decree No. 17258 of 1967). Belgium: equality of treatment throughout the territory is guaranteed wage earners by section 1 of the Act of 27 June 1969 modifying and supplementing the Legislative Decree of 28 December 1944 in respect of social security for workers (LS 1969 - Bel. 1); by the Legislative Order of 10 January 1945 respecting social security for miners and persons placed on the same footing as miners (LS 1945 - Bel. 3) and by the Legislative Order of 7 February 1945 respecting social security for seamen in the mercantile marine (LS 1945 - Bel. 10). The texts relating to branches (a), (b), (c), (d), (e) and (f) refer to these basic texts: see in particular, for branches (a), (b), (c) and (d), sections 21 and 45 of the Act of 9 August 1963 instituting and organising a system of compulsory insurance against sickness and disablement; regarding sections (e) and (f), section 1 of Royal Order No. 50 of 24 October 1967 (LS 1967 - Bel. 4); for branch (g), section 1 of the Act of 10 April 1971 (LS 1971 - Bel. 3) and section 2 of the Act of 24 December 1973, in respect of compensation for industrial accidents; regarding branch (h), Royal Order of 20 December 1963 (LS 1963 - Bel. 2). The field of application of the consolidated Acts with respect to family allowances for wage earners is also determined without distinction of nationality (section 1 of the Act of 4 August 1930). In the case of self-employed workers, equality of treatment is established by section 3 of Royal Order No. 58 of 27 July 1967, establishing the "social statute for self-employed workers", to which reference is made, regarding medical assistance, in section 1 of the Royal Order of 27 December 1967; branches (b), (c) and (d) are covered by section 3 of the Royal Order of 20 July 1971; branches (e) and (f) by section 1 of Royal Order No. 72 of 10 November 1967, and family allowances by sections 1, 2 and 3 of the Royal Order of 8 April 1976, which establishes the system of family allowances for self-employed workers, in application of the Act of 29 March 1976 in respect of family allowances for self-employed workers. The Committee reserves its opinion regarding the Act of 20 July 1971 to establish guaranteed family benefit (LS 1971 - Bel. 5). Burma: equality of treatment is provided implicitly by section 5 of the Social Security Act (No. LXVII) of 22 October 1954 (LS 1954 - Bur. 1) which refers to all persons, and explicitly by section 212 of its regulations. Byelorussian SSR: see under USSR; in addition to the legislation indicated there, it is appropriate to mention section 97 of the Constitution of Byelorussia (protection of mother and child); section 41 of the Public Health Act of the Byelorussian SSR; sections 239 to 244 of the Labour Code of the Byelorussian SSR, of 23 June 1972. United Republic of Cameroon: equality of treatment is guaranteed as regards coverage by the various legislations whose field of application is defined under section 1 of the Labour Code: branches (c) and (i): section 1 of Law 67/LF/7 of 12

June 1967, instituting a family allowances code; branches (d), (e) and (f): section 2 of Law No. 69/LP/18 of 10 November 1969, instituting old-age, invalidity and survivors' pensions insurance (LS 1969 - Cam. 3); branch (g): section 2 of Order No. 59-100 of 31 December 1959, in respect of compensation for and prevention of occupational accidents and diseases; furthermore, section 3 of this text, which extends the field of application to persons not covered by the Labour Code, makes no distinction on grounds of nationality; the field of application of the Labour Code, defined in section 1, does not refer to nationality; neither is any discrimination made as regards benefits. Cuba: sections 1 to 4 of the Social Security Act (No. 1100) of 27 March 1963 as modified by Act No. 1165 of 24 September 1964; section 1 of the Working Women's Maternity Act (No. 1263) of 14 January 1974. Cyprus: sections 1, 3, 24, 25 and 33, and annexes 1 and 2 of the Social Security Act (No. 106) of 1972. El Salvador: section 3 of Decree No. 1263 of 3 December 1953, the Social Security Act as modified (LS 1953 - Sal. 3; LS 1968 - Sal. 2 A; LS 1968 - Sal. 2 B); section 2 of Decree No. 117 of 25 September 1968 to approve the regulations for the disablement, old-age and survivors' insurance schemes (LS 1968 - Sal. 1). Guyana: section 11 and Part IV of the National Insurance and Social Security Act (No. 15) of 1969. Haiti: branches (d), (e), (f) and (g): sections 21, 22, 25, 26, 177, 178 and 179 of the Social Security Act of 28 August 1967. Hungary: the Social Security Act (No. II) of 1975; Decree No. 17/1975/VI.14/MT and Regulation No. 3/1975/VI.14/SZOT (translations not yet available). The Government states in its report that there is equality of treatment as regards medical care also, under Decree No. 7/1975/VI.24/EUM (text not available); the Committee nevertheless reserves its opinion regarding certain conditions which could affect temporarily resident aliens (branch (a)). Iceland: the field of application of the legislation is determined essentially by residence, without discrimination on grounds of nationality: branches (a), (b), (c), (d), (e) and (g): National Insurance Act (No. 40) of 30 April 1963 (LS 1963 - Ice. 1), as modified particularly by Act No. 67 of 1971, which removes all nationality conditions for entitlement to benefits; branch (h): Unemployment Act (cf. report); branch (i): family allowances were incorporated in the general tax system with effect from 1 July 1975 (cf. report). Indonesia: section 1, subsection 1, and section 6, subsection 1, of the Workmen's Compensation Act (No. 2) of 6 January 1951 (LS 1951 - Indo. 2). Iraq: Act No. 39 of 1971 respecting pensions and social security for workers, as modified, gives full equality of treatment as regards both coverage and entitlement to benefits. Kuwait: sections 1, 65 and 67 of Act No. 38 of 1964, respecting work in the private sector; the Committee was unable to examine the text of the other laws mentioned in the Government's report. Malaysia: sections 3 and 15 of the Act of 1969 to provide certain benefits to employees (LS 1969 - Mal. 1). Malawi: sections 2, 3 and 6-9 of the ordinance respecting compensation for occupational hazards, as modified. Mali: sections 2, 8, 69 and 151 of the Social Security Code of 9 August 1962. Regarding occupational accidents and diseases, in cases where residence is outside the monetary area to which Mali belongs, equality of treatment is given provided that there exists a treaty regarding reciprocity or the ratification of Convention No. 19; where this is not the case, the pension is capitalised (section 145 of the Code). The term "reciprocity treaty" would appear to be applicable to Convention No. 118, if this has been ratified. Mauritius: branch (b): section 2 of the Labour Act (No. 50) of 1975; branch (e): section 3 of the Old-Age Pensions Ordinance (No. 77) of 31 December 1951 (LS 1951 - Maur. 1, as modified); branch (g): sections 4 and 5 of the Workmen's Compensation Ordinance, as modified; branch (i): sections 2, 3 and 4 of the Family Allowance Ordinance (No. 62) of 28 December 1961. In addition, the Committee noted the adoption of the National Pensions Act (No. 44) of 1976, which repeals Ordinance 77 of 1951 and replaces the Workmen's

Compensation Ordinance in respect of the persons covered by it; this Act, which has not yet come into force, relates to branches (d), (e), (f) and (g) of the Convention and does not discriminate on grounds of nationality. Mexico: sections 12, 13 and 126 of the Social Insurance Act of 22 February 1973 (LS 1973 - Mex. 1) and section 8 of the Federal Labour Act of 2 December 1969 (LS 1969 - Mex. 1). Morocco: sections 2 and 32-61 of the Dahir to promulgate Act No. 1-72-184 of 27 July 1972, respecting the Social Security Scheme (LS 1972 - Mor. 2); sections 7-12 and 57 et seq. of the Dahir of 25 June 1927 respecting compensation for occupational accidents as modified by the Dahir of 6 February 1963. New Zealand: branches (a) and (c): section 91 of the Social Security Act of 1964 (LS 1964 - NZ 1), as modified; branch (b): section 54; branch (d): section 41; branch (e): sections 14 and 17; branch (f): sections 21, subsection 2, and 28, subsection 1; branch (g): sections 47 and 48 of this Act and sections 2, 55, 92, 102B and 102C of the Accident Compensation Act (No. 43) of October 1972 (LS 1972 - NZ 2), as modified by Act No. 112 of 1973; branch (h): section 58 of the Act of 1964 respecting social security; branch (i): article 33 of that same Act. Equality of treatment is also given by the Old-Age, Invalidity and Survivors' Pensions Act of 1974 (No. 41) (sections 34, 58, 61, 63 and 64). Niger: branches (c) and (i): section 5 of Decree No. 65-116 of 18 August 1965, in conjunction with section 1 of the Labour Code; branches (d), (e) and (f): section 2 of Decree No. 67-025 of 2 February 1967; branch (g): section 5 of Decree No. 65-117 of 18 August 1965. The Labour Code applies to all wage earners without distinction on grounds of nationality (section 1, Act 62-12 of 13 July 1962). Panama: the following provisions give equality of treatment: section 2 of Legislative Decree No. 14 of 27 August 1954, which modifies the Social Insurance Fund Act (No. 134) of 27 April 1943 (LS 1954 - Pan. 1), as modified by Act No. 15 of 31 March 1975; sections 7, 8, 27 and 32 of the Decree of the Cabinet of Ministers respecting the Centralisation by the Social Insurance Fund of Compulsory Coverage (No. 68) of 31 March 1970 (LS 1970 - Pan. 1); sections 1, 291, 300 and 305 of the Labour Code (LS 1971 - Pan. 1). The Committee reserves its opinion regarding the position of seamen (see in particular section 1 of Resolution No. 738 of the Social Insurance Fund, dated 18 August 1976). Paraguay: section 2 and 30-65 of Legislative Decree No. 1860 of 1 December 1950 to modify Legislative Decree No. 17071 of 18 February 1943 (LS 1950 - Par. 2); section 2 and Chapters VII to XII of Act No. 430 of 13 December 1973, establishing entitlement to ordinary and supplementary pension benefits. The Labour Code expressly applies without distinction on grounds of nationality (section 3). Romania: branch (a): section 1 of Decree No. 246 of 29 March 1958 respecting the regulations for eligibility for medical care; branches (b) and (c): sections 2 and 3 of Resolution No. 880 of 20 August 1965, respecting the grant of benefits under the State Social Insurance Scheme (LS 1965 - Rum. 1); branches (d), (e), (f) and (g): section 1 of Act No. 27 of 28 December 1966, respecting state social insurance pensions and supplementary pensions (LS 1966 - Rum. 2); branch (i): the legislation in respect of family allowances, mentioned in the report (particularly Decree No. 285 of 6 August 1960, respecting the granting of state family allowances, which subsequently became Act No. 65/1972), does not appear to make any discrimination on grounds of nationality. Rwanda: section 2 of the Legislative Decree of 22 August 1974, organising social security and section 2 of the Act of 28 February 1967 to establish a Labour Code (LS 1967 - Rwa. 1). Sierra Leone: sections 2 and 4 (definition of the term "workmen"), section 3 (definition of "dependants") and sections 6-9 and 32 ("compensation"), of the Workmen's Compensation Ordinance (LS 1954 - SL 1), modified by Act No. 18 of 1969 and Act No. 2 of 1971. Somalia: branches (b) and (c): sections 1 and 2 of the Labour Code (LS 1972 - Som. 1); branch (g): sections 10 and 11 and part 6 of Act No. 76 of 1972 respecting compulsory insurance for industrial accidents and occupational

diseases. Decree No. 155 of 28 December 1951, which covers branches (a), (b) and (c), contains no discrimination on grounds of nationality (see in particular section 1). The Committee was unable to examine Act No. 36 of 23 August 1972 which, according to the report, provides for benefits in branches (b), (c), (e) and (g) to the workers of "autonomous bodies" without discrimination on grounds of nationality.

Thailand: sections 2 and 50 of the Announcement of 16 April 1972 by the Ministry of the Interior respecting labour protection and issued in application of Announcement No. 103 of 16 March 1972 issued by the National Executive Council, to review the laws on labour and the settlement of labour disputes (LS 1972 - Thai. 1).

Trinidad and Tobago: the National Insurance Act (No. 35) of 10 November 1971 respecting national insurance contains no discriminatory provisions.

Ukrainian SSR: see under USSR; in addition to the legislation already mentioned, reference should be made to section 46 of the Public Health Act of the Ukrainian SSR, of 15 July 1971, and sections 253 to 258 of the Labour Code of the Ukrainian SSR, of 10 December 1971 (corresponding to sections 236-243 of the Labour Code of the RSFSR (LS 1971 - USSR 1)).

USSR (RSFSR): section 32 of the Fundamental Principles Governing the Health Legislation of the USSR and the Union Republics of 19 December 1969; sections 100-103 of the Fundamental Principles Governing the Labour Legislation of the USSR and the Union Republics of 15 July 1970 (LS 1970 - USSR 1); section 70 of the regulations respecting the granting and payment of benefits under state social insurance of 3 August 1972; section 1 of the National Pensions Act of 14 July 1956 (LS 1956 - USSR 4); section 1 of the Act respecting Pensions and Allowances for Members of Collective Farms, of 15 July 1964 (LS 1964 - USSR 1); regulations respecting the granting and payment of allowances to pregnant women, single mothers and mothers with large families, of 12 August 1970. The Committee reserves its opinion concerning certain conditions as to equality of treatment in respect of medical care, which might affect temporarily resident aliens (branch (a)); this reservation also applies to the Byelorussian SSR and the Ukrainian SSR.

United Kingdom: the basic legislation, which covers all the branches, gives equal treatment without any restriction on grounds of nationality (National Health Service Act of 1946, as amended (LS 1946 - UK 5 and LS 1951 - UK 2); Family Benefits Act of 1965, as amended; Social Security Act of 1975, as amended). The Government also states that the matters dealt with in Convention No. 118 are covered in the United Kingdom by Regulations Nos. 1408/71 and 574/72 of the European Economic Community, which establishes equality of treatment for nationals of the Community's member States.

United States: branch (a): section 1811 of the Social Security Act, as amended (see 1975 edition of "US Senate, Committee on Finance, US Government Printing Office", and LS 1935 - USA 2, LS 1939 - USA 2, LS 1946 - USA 3, LS 1948 - USA 1, LS 1950 - USA 2 and LS 1952 - USA 1); it is stated in the report that the United States Act applies to all workers, without distinction on grounds of nationality. Branches (d), (e) and (f): section 210(a), (b) and (j) and section 216 of the Social Security Act. Branch (h): it is stated in the report that nationality is not normally taken into account in the state laws when determining eligibility for unemployment insurance; it was not possible to refer to these laws. Regarding medical care, it is stated in the report that the supplementary voluntary insurance scheme is not open to aliens unless they are permanently resident and have been so for five years; this discrimination does not conflict with the Convention because the latter does not apply to voluntary insurance.

Upper Volta: branches (c), (d), (e), (f), (g) and (i): subsection 3(1) of Act No. 13-72 of 28 December 1972 approving the Social Security Code for Employees (LS 1972 - Vol. 1).

Uruguay: branches (a) and (b): section 8 of Act No. 14407 of 15 July 1975 establishing the Sickness Insurance Administration. Branch (c): section 2 of Act No. 12572 of 23 October 1958, introducing the maternity allowance. Branches (d), (e) and (f): the

legislation in respect of these branches, which is scattered and difficult to consult, appears to give equality of treatment (see the legislation concerning the Social Security Bank, created by section 195 of the 1967 Constitution, Act No. 6962 of 6 October 1919, establishing a Pensions Fund for Public Service Workers and Employees, Act No. 12761 of 23 August 1960, respecting the Retirement and Old-Age Pensions Fund for Industry and Commerce, and Act No. 11617 of 20 October 1950, respecting rural workers' and domestic employees' retirement and old-age pensions (LS 1950 - Ur. 2)). Branch (g): sections 2-4 of Act No. 10004 of 28 February 1941 to issue rules respecting industrial accidents and occupational diseases (LS 1941 - Ur. 1). Branch (h): sections 1 and 2 of Act No. 12570 of 23 October 1958 creating unemployment insurance; there exist other special systems, but these also do not make any provision for discrimination on grounds of nationality: Act No. 10562 of 12 December 1944; Act No. 10681 of 4 December 1945; Act No. 14552 of 15 October 1966. Branch (i): section 21 of Act No. 10449 of 12 November 1943 respecting the Wages Board. Yemen: the Labour Act (No. 50) of 1970 makes no discrimination on the basis of nationality (the benefits provided for in this Act are paid by the employer).

13 The countries in question are, for example, the following: Algeria: in principle, the legislation to a large extent provides for equality of treatment: family allowances (decrees issued by the Governor-General on 6 May and 10 June 1941); non-agricultural social security (section 36 of Decision No. 49-045 of the Algerian Assembly, given executive effect by a social security order of 10 June 1949, as amended, LS 1949 - Fr. 4 and LS 1959 - Alg. 1); industrial accidents (sections 8 and 11 of Ordinance No. 66-183 of 21 June 1966, LS 1966 - Alg. 1); social insurance scheme in agriculture (section 26 of Ordinance No. 71-14 of 5 April 1971, LS 1971 - Alg. 1); medical care (Ordinance No. 73-65 of 28 December 1973, establishing free medical care). However, discrimination on grounds of nationality exists with regard to the granting of allowances to old employees both in the non-agricultural sector (section 39 of Decision No. 49-045 of the Algerian Assembly; Decree of 29 June 1950 issued by the Governor-General of Algeria) and in the agricultural sector (section 31 of the Ordinance of 5 April 1971); (because these are benefits granted as a transitional measure, payment to foreign workers may be subject to special residence conditions under para. 3 of Article 3 of the Convention). Australia: branch (a): all residents are entitled to medical care (section 3 of the Public Health Act, 1973-1976), except those whose permanent or normal place of residence is outside Australia. This provision does not appear to constitute a difference in treatment based on the nationality of the persons excluded but only on the type of residence. On the other hand, the Committee reserves its opinion concerning the practical application of section 6 of this Act, which appears to give rise in fact, and, according to the report, to discriminations based on nationality. Branches (b), (c), (d), (e), (f) and (h): the fundamental law (Social Services Act 1947-1976), based on residence, ensures fairly general equality of treatment. Branch (i): family allowances are not paid if the father is a non-national except when the mother is a British subject unless the child was born in Australia or there is a probability that it will remain there permanently (section 95, subsection 5, of the Social Services Act); this provision is not compatible with the Convention. Branch (g): the legislation is applied equally to nationals and non-nationals (Capital Territory: Workers' Compensation Ordinance 1951-1971; Northern Territory: Workers' Compensation Ordinance 1949-1973; New South Wales: Workers' Compensation Act 1926, as amended, and Workers' Compensation ("Broken Hill") Act 1920, as amended; Victoria: Workers' Compensation Act 1958; Queensland: Workers' Compensation Act 1916-1973; South Australia: Workers' Compensation Act 1971-1974; Western Australia: Workers'

Compensation Act 1912-1975; Tasmania: Workers' Compensation Act 1927, as amended). The (National) Seamen's Compensation Act 1911-1974 also applies without distinction on grounds of nationality. Bulgaria: branch (a): sections 26 and 27 of the Public Health Act of 1973 and section 28, subsection 1, of the regulations of 6 November 1973 for the application of that Act; the Committee reserves its opinion concerning certain conditions in respect of medical care which might apply to temporarily resident foreigners. For other branches, equality of treatment is guaranteed by section 145 of the Labour Code (LS 1951 - Bul. 2) and, according to the report, by section 1, subsection (o), of the enabling regulations for Part III of the Labour Code. With particular reference to branches (d), (e) and (f), and branch (g) (pensions), equality of treatment is guaranteed by section 2 and (survivors' pensions) by sections 31 and 38 of Ukase No. 465 of 6 November 1957 (LS 1957 - Bul. 1). Item 83 of the enabling regulations, referred to in the report, expressly establishes equality of treatment as regards entitlement to pensions. Family allowances are granted without distinction on grounds of nationality (section 2 of Decree No. 134 of 22 February 1968, LS 1968 - Bul. 2); however, the allowance for every child born alive is payable only to Bulgarian citizens (section 1, as amended). Canada: branch (a): section 3.2(a) of the Hospitalisation and Diagnostic Services Act of 1957, and section 4.1(b) of the Medical Care Act of 1966-1967 (these federal Acts make the payment of subsidies to the provinces conditional on their laws being applicable to all residents; the report also points out that this ensures that there is no discrimination on grounds of nationality); branches (b), (c) and (h): section 3 of the Act of 23 June 1971 respecting unemployment insurance (LS 1971 - Can. 4); branch (e): sections 3 and 9 of the Act to provide Old-Age Insurance (R.S., Ch. 200); branches (d), (e) and (f): section 6 of the Canada Pension Plan of 3 April 1975 (LS 1965 - Can. 2); branch (g): the report points out that aliens and stateless persons receive equality of treatment without a reciprocity requirement; branch (i): the Act of 1973 respecting family allowance applies to all residents without discrimination on grounds of children's nationality; however, one of the parents must be a Canadian citizen or have been recognised as an immigrant under the immigration law or admitted as a non-immigrant in accordance with established conditions (section 3.1 of the Act). The latter condition applies to non-immigrants admitted for a period of at least one year and to those whose incomes are subject to Canadian income tax. This appears to constitute discrimination on grounds of nationality, as the "non-immigrants category" comprises, amongst others, frontaliere, temporary workers and particularly seasonal workers (section 7(1) (i) of the Act respecting Immigration, R.S. Ch. 325, section 1), including, in particular, seasonal agricultural workers recruited in Jamaica, Barbados and Trinidad and Tobago under the Caribbean Seasonal Workers' Programme. Czechoslovakia: branch (a): the entire population is entitled to medical care (Act No. 20 of 17 March 1966 respecting public health). However, the report mentions the existence of certain conditions regarding the gratuity of medical care for aliens, particularly those who do not have a permanent residence (Notification No. 42 of 13 June 1966 respecting prophylactic care and treatment). Branches (b), (c) and (g) (temporary incapacity) and (i): the legislation applies to all employees (section 2 of the Act of 30 November 1956 respecting the sickness insurance of employees; (LS 1956 - Cz. 3 B), or to all persons working in agricultural co-operatives (sections 1 and 2 of the Act of 4 June 1964 respecting a social security scheme for co-operative farmers (LS 1964 - Cz. 2 B) as amended in 1976), or to all women and men workers as regards maternity benefits and children's allowances (sections 3 and 16 of the Act of 27 June 1968 respecting the extension of maternity leave and the grant of maternity benefits and children's allowances; LS 1968 - Cz. 2). Branches (d), (e), (f) and (g) (permanent incapacity and death): the legislation of 1975 mentioned

in the report does not appear to be discriminatory (Act of 12 November 1975 respecting social security). Branch (h): the report states that there is no unemployment, but that cases of unemployment can arise due to the need for adaptation as a result of structural changes, in which case benefits are paid without discrimination on grounds of nationality, in compliance with Notification No. 74/1970. German Democratic Republic: the following provisions ensure equality of treatment: section 17 of the Order of 14 November 1974 concerning the social insurance of workers and employees; sections 8, 12, 16 and 23 of the Order concerning social insurance under the state insurance scheme; section 1 of the Order concerning the calculation and award of social insurance pensions; section 1 of the Order of 4 December 1975 concerning the award of a statutory children's allowance and the special benefits provided for under the law in respect of large families and unmarried citizens with three children, and section 3 of the first rules for the application of this Order. On the other hand, a discrimination based on nationality exists in section 2(2) (o), in conjunction with section 80, of the aforementioned Order of 4 April 1974; certain periods of employment abroad are counted as pensionable employment, but, in the case of aliens and stateless persons, this applies only if they have held occupational employment in the Republic for at least five years (this extra condition does not have to be satisfied in the case of industrial accidents or occupational diseases). The Committee reserves its opinion with regard to certain conditions in respect of medical care which might affect temporarily resident non-nationals (branch (a)). Malta: equality of treatment is ensured by the National Insurance Act (No. VI) of 1956, as amended by Act No. LIII of 1974, with the following exception: entitlement to family benefits is limited to Maltese citizens and to full orphans living in Malta if at least one of the parents was a citizen of Malta (section 73, subsections (4), (6) and (7); section 74, subsection (2)). However, the Minister may make derogations to the conditions laid down in subsection 6 of section 73. Nigeria: equality of treatment is granted, in principle, by section 2, subsection 1, and section 9 of Act No. 20 of 26 June 1961, establishing a National Provident Fund (LS 1961 - Nig. 1), as amended, and sections 2 and 5 of the Act of 1 April 1942 respecting industrial accidents, as modified. However, the coverage of Act No. 20 of 1961 does not extend to aliens employed in Nigeria for a period not exceeding six years at a time, when the employer can show that the worker is obliged to contribute to the social security scheme of another country, or is entitled to receive benefits from it, or to another social security scheme established by the employer or under his employment, ensuring benefits substantially equivalent to or better than those provided for in the Act (paragraphs 6 and 7 of the second schedule). Peru: the following provisions ensure equality of treatment: branches (a), (b) and (c): section 2 of Act No. 8433 of 12 August 1936 respecting compulsory social insurance (LS 1936 - Per. 2), as modified by Act No. 8509 of 23 February 1937 (LS 1937 - Per. 1), and sections 14 and 16 of Act No. 13724 of 18 November 1961, instituting a social insurance scheme for salaried employees (LS 1961 - Per. 3 A); branches (d), (e) and (f): section 2 of Legislative Decree No. 18846 of 28 April 1971 respecting employment accidents and occupational diseases (LS 1972 - Per. 1 B); branch (g): section 2 of Legislative Decree No. 18846 and section 2 of Act No. 1378 of 20 January 1971, respecting compensation for employment accidents. However, with regard to branch (g), subsection 3 of section 10 of Decree No. 002-72-TR of 24 February 1972, making regulations under the aforementioned Legislative Decree No. 18846 of 1971 (LS 1972 - Per. 1), excludes from compulsory insurance those foreign wage earners engaged to perform services in Peru, whose remuneration is higher than the maximum received by Peruvian workers except as may be provided to the contrary by the Executive Board of the National Social Insurance Fund. Senegal: branches (c), (g) and (i): equality of

treatment is provided by section 1 of the Social Security Code (LS 1973 - Sen. 1) relating to workers covered by the Labour Code (LS 1962 - Sen. 2 B) and the Mercantile Marine Code (LS 1962 - Sen. 1); branches (e) and (f): the recent Decree No. 75-455 of 24 April 1975, making membership of a pension scheme compulsory for all employers and workers, as modified by Decree No. 76-017 of 9 January 1976, applies without distinction to all workers (section 1, subsection 1); however, foreign workers are excluded if they are members of a pension system established under other legislation. Singapore: the following provisions ensure equality of treatment: branches (b) and (c): sections 43 and 95 of Act No. 17 of 6 August 1968, consolidating and amending the law relating to employment (LS 1968 - Sin. 1); branches (d), (e) and (f): sections 2 (definitions of "workman"), 6 and 11, subsection 2, of the Act of 1 July 1958 establishing a Central Social Security Fund, as amended; branch (g): section 2 (definitions of "workman" and "dependant") of Act No. 25 of 25 August 1975 respecting compensation for industrial accidents and occupational diseases. On the other hand, section 2 "workman", para. (b) of the aforementioned Act of 1 July 1958 admits seamen to the Central Social Security Fund only if they are citizens of Singapore. Uganda: the following provisions ensure equality of treatment: section 2, subsection 1, and section 3, subsection 1, of Ordinance No. 43 of 1955 respecting compensation for industrial accidents and occupational diseases, as modified by Act No. 5 of 1969; section 3, section 5, Annex 2, section 12 and Annex 4 (admission), and sections 16-24 (benefits) of the Social Security Act (LS 1967 - Ug. 1). However, according to the Government's report, foreigners are required to have three years' residence in Uganda as a condition for admission, subject to reciprocity agreements or, if such agreements do not exist, decision by the appropriate minister; if Convention No. 118 is ratified, it could be considered as the instrument of reciprocity which would eliminate this residence requirement. Zambia: the legislation of this country (Act respecting the social security fund, Act respecting employment and Act respecting compensation for industrial accidents and occupational diseases) ensures equality of treatment, except that section 14 and para. 8 of Schedule 3 of the Act in respect of the national social security fund excludes from membership those foreign workers entitled to benefits from another social security system, which are not less favourable than those received by nationals.

¹⁴ The countries in question are, for example, the following: Austria: the following provisions secure equality of treatment: sections 1-3 of the General Social Insurance Act of 9 September 1955 (LS 1955 - Aus. 3), as amended (hereinafter: ASVG); section 1, subsection 1, of the Unemployment Insurance Act (LS 1958 - Aus. 1), as amended; section 1, subsection 1, of the Family Charges Equalisation Act of 24 October 1967 (LS 1967 - Aus. 2), as amended (hereinafter: FLAG). These Acts embody the following restrictions based on nationality: ASVG: section 5, subsection 1(9), states that foreign workers employed in Austria by an employer enjoying extra-territoriality are excluded from sickness, employment injury and pension insurance; Unemployment Insurance Act: section 26, subsection 2, limits to Austrian nationals the provision of emergency assistance (subject to the exceptions provided for in section 26, subsection 3, and section 27, subsections 2 and 3); FLAG: section 4, subsection 2, limits to Austrian nationals the provision of an equalisation payment for persons excluded from entitlement to family allowances by virtue of subsection 1. Costa Rica: nationality is not taken into account in determining eligibility for social insurance (branches (a), (b), (c), (d), (e) and (f)) (sections 3 and 4 of Act No. 17 of 22 October 1943, under which the Costa Rican Social Insurance Fund was set up (LS 1943 - CR 2), as amended by Act No. 4750 of 30 March 1971); as concerns branch (g), the legislation applies to all workers falling within the

scope of Chapter II of Part IV of the Labour Code, including aliens (sections 4, 206 and 209 of the Code (LS 1943 - CR 1)). There is, however, a restriction based on nationality in subsection 4 of section 4 of the new Invalidity, Old-Age and Death Insurance Regulations adopted on 29 June 1971 by the Board of Directors of the above-mentioned Fund, which provides that aliens who come to work in the country under a non-renewable contract of employment for a period not exceeding one year shall not be liable to insurance. Furthermore, the scope of the Regulations of 1 October 1975 for the extension of social insurance to self-employed persons appears to be limited to "citizens" (section 2(2)(b)); if this term were intended to designate nationals of Costa Rica, this would constitute another restriction based on nationality. Branch (i): section 7 of Decree No. 4674-355, 28 March 1975, promulgated in application of Act No. 5662, 16 December 1974, applies only to "Costa Ricans". Egypt: the Social Security Act, No. 79 of 1975 (which has replaced the Act of 1964) appears to be applicable without distinction as to nationality, except as regards invalidity, old age and death, in respect of which non-nationals are covered only if the duration of their employment exceeds one year and if their countries of origin likewise accord equality of treatment to Egyptians. There would appear to be no discrimination as regards the coverage of Act No. 61 of 1973 respecting social insurance for self-employed persons, nor of Act No. 112 of 1975 respecting members of the economically active population not covered by social insurance; however, such information as is available in this respect is not sufficiently detailed to enable a definitive opinion to be formed. Ethiopia: equality of treatment is secured in respect of branches (a) and (b) by virtue of the definition of the term "worker" (article 2 of Proclamation No. 64 of 1975), and in respect of branch (g) as concerns the employer's liability (section 389 of the Civil Code). On the other hand, as concerns branches (d), (e), (f) and (g), Proclamation No. 49 of 1975 is applicable only to Ethiopian nationals. Greece: Emergency Law No. 1846 of 14 June 1951 respecting social insurance, as amended (LS 1951 - Gr. 4; LS 1960 - Gr. 1, and LS 1966 - Gr. 1), which covers branches (a), (b), (c), (d), (e), (f), (g) and (h), is applicable in principle without any condition of nationality (section 2). Nevertheless, aliens temporarily employed in Greece are not liable to compulsory insurance, temporary employment being understood to mean employment not likely to last one year, with a possibility of extension up to three years (section 4). The report states that this exemption meets the wishes of the workers concerned and their governments; however, to comply with the Convention the reference to nationality should be removed. Act No. 4169 of 15 May 1961 respecting social insurance for agricultural workers (LS 1961 - Gr. 1) is applicable without distinction as to nationality. It has not been possible to consult the family allowances legislation. The special scheme for seafarers is applicable only to Greeks, although in the case of fishermen nationality is immaterial (section 1 of Emergency Law No. 2525 of 23 August and 2 September 1940 (LS 1940 - Gr. 1), and Royal Decree No. 83 of 2 February 1962 (LS 1962 - Gr. 1)). Japan: branches (a), (b) and (c): the Health Insurance Law, No. 70 of 22 April 1922 (LS 1922 - Jap. 3), applies to employees of undertakings employing not less than five workers, without any condition of nationality; on the other hand, the National Health Insurance Law, No. 192 of 27 December 1958, grants equality of treatment only 'on a reciprocal basis (at present reciprocity has been granted only to Koreans). Branches (d), (e) and (f): the Employees' Pension Insurance Law, No. 115 of 19 May 1954, is applicable without distinction as to nationality (sections 6 and 9); however, the National Pension Law, No. 141 of 16 April 1959, is applicable only to nationals. Branch (g): the Workmen's Accident Compensation Insurance Law, No. 50 of 7 April 1947 (LS 1947 - Jap. 6), is applicable without distinction as to nationality (section 1). Branch (h): the Employment Insurance Law, No. 116 of 28 December 1974,

is applicable to all employees, without distinction as to nationality (section 5). Branch (i): the Children's Allowance Law, No. 73 of 27 May 1971, is applicable only to Japanese (section 4). Liberia: the legislation on employment injuries (the only branch covered by the legislation of this country) excludes from its scope foreign employees in Liberia of public or private employers if they are entitled by special contract to equivalent or more favourable compensation (section 3501, subsection (g) (vii) of Ch. 36, respecting workmen's compensation, of the Handbook of Labour Laws of Liberia). Luxembourg: the following provisions secure equality of treatment: branches (a), (b) and (c): section 1 of the Act of 17 December 1925 respecting the Social Insurance Code (wage earners); section 1 of the Act of 29 August 1951 and section 9 of the Act of 23 May 1964 (salaried employees, members of the professions and civil servants); section 1 of the Act of 29 July 1957 (self-employed workers); section 1 of the Act of 13 May 1962 (farmers). Branches (d), (e) and (f): section 170 of the Social Insurance Code (wage earners); section 1 of the Act of 29 August 1951 and section 1 of the Act of 23 May 1964 (salaried employees and members of the professions); section 1 of the Act of 21 May 1951 (craftsmen); section 1 of the Act of 3 September 1956 (farmers); section 1 of the Act of 22 January 1960 (trades people and industrialists); sections 1 and 2 of the Act of 30 July 1960 (National Solidarity Fund). Branch (g): wage earners and salaried employees; however, protection under the law may be withheld in the case of nationals of States whose legislation does not grant equality of treatment to Luxembourg nationals (section 93 of the Social Insurance Code); this retortion clause - admissible in principle under para. 3 of Article 3 of the Convention - could be applied, in the event of ratification of the Convention and acceptance of this branch, only to nationals of Members which had also ratified the Convention without accepting branch (g), despite having legislation relating to this branch; branch (i): section 5 of the Act of 19 April 1964 (LS 1964 - Lux. 1) and section 1 of the Act of 17 April 1974. The following provisions impose restrictions on equality of treatment: branches (a), (b), (c), (d), (e) and (f): sections 4 and 174 of the Social Insurance Code (the Minister may exempt non-nationals residing temporarily in the country from liability for sickness and pension insurance); branches (a), (b), (c), (d), (e), (f) and (g): section 304 bis, subsection 2, of the Social Insurance Code (non-national employees suffering from an infirmity or from a parasitic, contagious or chronic disease which they have not disclosed to the medical practitioner when being medically examined to determine their fitness for employment may be excluded from benefiting under the Code); branch (h): section 22, subsection 2, of the Grand-Ducal Decree of 24 May 1945 (unemployment benefits are payable to non-nationals only in so far as provision has been made therefor in bilateral or multilateral agreements to which Luxembourg is a party). Philippines: the following provisions secure equality of treatment: sections 8(d), 9 and 12-14 of the Social Security Act, No. 1161 of 20 May 1954 (LS 1954 - Phi. 1), as amended by Presidential Decrees No. 24 of 19 October 1972, No. 347 of 23 December 1973 and No. 735 of 27 June 1975; sections 165, 166, 183 and 189-192 of the Labour Code (LS 1974 - Phi. 1); Rule I(2), Rules VII-XIV and Rule XVII of the Rules on Employees' Compensation, adopted for the administration of the provisions of Title II of Book IV of the Labour Code. However, section 15 of the Social Security Act stipulates that a beneficiary who is a national of a foreign country which does not extend benefits to a Filipino beneficiary residing in the Philippines, or which has not been recognised by the Philippines, shall not be entitled to receive any benefits under the Act. Poland: the following provisions secure equality of treatment: section 3 of the Act of 17 December 1974 respecting the cash social insurance benefits payable in the event of sickness and maternity (LS 1974 - Pol. 6); sections 1 and 5 of the Act of 23 January 1968 respecting universal pension security for workers

and their families (LS 1968 - Pol. 1 A); section 1 of the Act of 12 June 1975 respecting the benefits granted in respect of employment accidents and occupational diseases (LS 1975 - Pol. 1). The legislation of this country imposes the following restrictions on equality of treatment: branches (b), (c) and (i): the Act of 17 December 1974 does not apply to nationals of foreign States who are employed in foreign diplomatic missions, consular offices or international institutions and who have no permanent place of residence in Poland, unless provision to the contrary is made by international agreement (section 4, subsection 1(l)); branches (d), (e) and (f): certain periods of employment are taken into account only in the case of Polish citizens under the terms of section 8, subsections 2 and 5, of the Act of 23 January 1968; branch (g): benefits under the Act of 12 June 1975 are likewise granted to Polish citizens working abroad for Polish employers (section 3, subsection 2), and the provisions of this Act do not apply to nationals of foreign States who are employed in foreign diplomatic missions, consular offices or international institutions and who have no permanent place of residence in Poland, unless provision to the contrary is made by international agreement (section 4, subsection 1). In addition, the Committee reserves its opinion with respect to certain conditions on equality of treatment which might affect foreign temporary residents as regards medical care (branch (a)). Portugal: the general scheme, which covers branches (a), (b), (c), (d), (e), (f) and (i), implicitly accords equality of treatment to non-nationals (section 17, subsection 1, of Decree No. 45266 of 23 December 1963 laying down general regulations for trade union provident funds); foreign workers in temporary employment are, however, excluded if it is established that they are insured under the compulsory social insurance scheme of their own country (section 17, subsection 3). The rural scheme makes no distinctions on the ground of nationality (basis IX of Act No. 2144 of 29 May 1969, to provide for social security in rural areas). With regard to occupational risks (branch (g)), Act No. 2127 of 3 August 1965, to promulgate the basic legal provisions respecting industrial accidents and occupational diseases (LS 1965 - Por. 1), places alien workers on the same footing as Portuguese workers (basis III, para. 1). However, there are two provisos: in the first place, equality of treatment is conditional upon the legislation of the country concerned granting to Portuguese workers equality of treatment with its own nationals (*ibid.*, in fine); this retortion clause would be in conformity with para. 3 of Article 3 of the Convention if it were applied only to countries which have ratified the Convention without accepting its obligations in respect of branch (g); in the second place, the scope of the Act does not include alien workers injured in accidents in Portugal while in the service of foreign undertakings if their entitlement to compensation is recognised in their country of origin (basis III, para. 3). As concerns unemployment, the legislation is applied without discrimination based on nationality (sections 1 and 3 of Legislative Decree No. 169-D/75 of 31 March 1975). Nor is there any discrimination based on the nationality of survivors (sections 96 and 97 of Decree No. 45266 of 23 September 1973 and basis XIX of Act No. 2127 of 3 August 1965). Spain: section 7, subsections 1 and 4, of Decree No. 2065 of 30 May 1974, to approve the consolidated text of the General Social Security Act (LS 1974 - Sp. 2); resolution of the General Department of Welfare dated 15 April 1968, respecting equal treatment for nationals and non-nationals as concerns their social security coverage. Foreign nationals (as well as stateless persons and refugees) are placed on the same footing as Spaniards, with the exception of self-employed persons, frontier workers, entertainers in the country for a short time and seafarers; these exceptions do not apply in the case of nationals of Spanish-speaking Latin American countries, Andorrans, Filipinos, Portuguese and Brazilians, or nationals of other countries where an agreement has been concluded to that effect. Switzerland: branch (a):

equality of treatment is not formally granted under the Federal Act of 13 June 1911 respecting sickness and accident insurance; subsection 2 of section 3 of this Act does in fact stipulate that sickness funds may not treat Swiss citizens less favourably than other insured persons (the report states that in practice there is no discrimination on the basis of nationality); branches (d), (e) and (f): the federal legislation grants equality of treatment as concerns coverage (section 1, subsection 1, of the Federal Act of 20 December 1946 respecting old-age and survivors' insurance, as amended (LS 1946 - Swi. 1); LS 1950 - Swi. 1; LS 1953 - Swi. 1; LS 1959 - Swi. 1; LS 1961 - Swi. 1), and section 1 of the Federal Act of 19 June 1959 respecting disability insurance, as amended (LS 1959 - Swi. 1; LS 1967 - Swi. 1)). As regards benefits, however, ordinary pensions, which are contributory benefits, are payable to aliens or their survivors only on condition that they have paid contributions for ten years in the case of branches (e) and (f) (section 18 of the Federal Act of 20 December 1946), and that they have paid contributions for ten years or been continuously domiciled in Switzerland for 15 years in the case of branch (d) (section 6 of the Federal Act of 19 June 1959). In principle, aliens are not entitled to (non-contributory) special old-age, invalidity and survivors' pensions (section 42 of the Federal Act of 20 December 1946); the (non-contributory) supplementary pensions payable under the Federal Act of 19 March 1965 are granted to aliens only after 15 years of continuous residence prior to making the claim, and to stateless persons after five years of continuous residence; branch (g): the Federal Act of 13 June 1911 respecting sickness and accident insurance makes no discrimination as regards coverage (section 60), but makes equality of treatment conditional upon legislative reciprocity (section 90); however, in its first report on Convention No. 19 the Government stated that under the Swiss constitutional system equality of treatment could be extended without it being necessary to amend the law (this would also be the case, apparently, in the event of ratification of Convention No. 118); branch (h): the report states that under the legislation currently in force (Federal Act of 22 June 1951 respecting unemployment insurance (LS 1951 - Swi. 1), as amended, and the regulations for its administration dated 17 December 1951, as amended in particular by the Federal Council Ordinance of 9 July 1975) the insurance of aliens with a yearly work permit is conditional upon their having lived in Switzerland without interruption for at least one year; branch (i): the legislation in force makes no discrimination on the basis of nationality (Federal Act of 20 June 1952 to prescribe a scheme of family allowances for agricultural workers and mountain peasants, LS 1952 - Swi. 1).

¹⁵ The countries in question are, for example, the following (a list of the branches accepted by these countries is to be found in Appendix I): Barbados: branch (a): sections 12 and 14 of the National Insurance and Social Security Act of 4 July 1967 (Cap. 67 of the Laws of Barbados). Brazil: branch (h): section 5 of Act No. 4923 of 23 December 1965, which provides for measures to combat unemployment and to assist the unemployed, as amended by Act No. 5737 of 22 November 1971 (administered by Decree No. 58155 of 5 April 1966, which established the Assistance Fund for the Unemployed); branch (i): family allowances are payable to every employee within the meaning of the Consolidation of Labour Laws (section 1 of Act No. 4266 of 3 October 1963, to provide for family allowances for workers, and for other purposes (LS 1963 - Bra. 2), and section 3 of the regulations appended to Decree No. 53153 of 10 December 1963). Central African Empire: branch (f): sections 1, 4, 17 and 18 of Act No. 63/412 of 5 June 1963, to establish a retirement scheme for employed persons covered by the Labour Code, and section 1 of that Code. France: branch (e): equality of treatment is guaranteed, as far as "contributory" benefits are concerned, by section L 245 of the Social

Security Code as regards the general scheme; by section 1027 of the Rural Code as concerns agricultural employees; by Book VIII of the Social Security Code (implicit provisions of sections L 643 et seq.) as concerns non-employed persons; and by section 1107 of the Rural Code (implicit provisions) as concerns non-employed persons in agriculture; branch (h): sections L 351.1 to L 351.21 of the Labour Code (and article 3 of the Inter-Occupational Collective Agreement of 31 December 1958, in so far as this agreement establishes a legal obligation for workers to be insured against unemployment). As concerns refugees and stateless persons, in the case of the two branches mentioned, equality of treatment appears on the whole to be amply guaranteed (it will be recalled in this connection that France has ratified the Convention of 28 July 1951 relating to the Status of Refugees and the Convention of 28 September 1954 relating to the Status of Stateless Persons); the Committee reserves its opinion as concerns administrative practice in this respect. (See also note No. 30 in paragraph 35 above and note No. 18 in paragraph 98 below.) Federal Republic of Germany: branches (d), (e), (f) and (i): section 1227 of the Insurance Code (RVO) (LS 1973 - Ger. F.R. 1), as amended; corresponding provision of the Salaried Employees' Insurance Act (AVG) (LS 1924 - Ger. 6), as amended; section 1 of the Federal Family Allowances Act (BKGG) of 14 April 1964 (LS 1964 - Ger. F.R. 1), as amended in 1975. Guinea: branch (d): sections 5 and 155-160 of the Social Security Code (Act No. 21 AN-60 of 12 December 1960, promulgated by Decree No. 103/PG of 31 March 1961). India: branch (g): equality of treatment is implicitly guaranteed by section 2, subsection 1, of the Workmen's Compensation Act of 1923 (LS 1923 - Ind. 1), as amended, and section 2, subsection 9, of the Employees' State Insurance Act of 19 April 1948 (LS 1948 - Ind. 3), as amended. Branches (e) and (f): section 2(f) and section 26, subsection 1, of the Employees' Provident Funds, Family Pension and Bonus Schemes, Act of 4 March 1952 (LS 1952 - Ind. 2); section 69, subsection 2, of this Act is equally applicable to nationals and non-nationals. The Committee reserves its opinion with regard to the Coal Mines Provident Fund, Family Pension and Bonus Schemes, Act, the text of which it has not been able to examine. Madagascar: branches (e) and (f): section 2 of Act No. 68-023 of 17 December 1968 to institute a retirement scheme and establish a National Social Insurance Fund (LS 1969 - Mad. 1 B); branch (i): section 128 of the Social Insurance Code (LS 1969 - Mad. 1 A). These provisions apply to the workers covered by the Labour Code and the Merchant Navy Code, which make no discrimination on the basis of nationality. Pakistan: branches (d) and (e): sections 3, 22 and 23 of the Employees' Old-Age Benefits Act, No. XIV of 1976 (this Act also makes provision for invalidity benefits).

It should be recalled that Tunisia has no legislation covering branch (h) - the only branch in respect of which it has not accepted the obligations of the Convention.

¹⁶ The countries in question are, for example, the following (a list of the branches accepted by these countries is to be found in Appendix I): Denmark: all employees, without any condition as to nationality, are eligible for daily maternity benefit and supplementary old-age and survivors' pensions under the Labour Market Supplementary Pension Act (ATP) of 7 March 1964. On the other hand, foreign workers are excluded from coverage by the supplementary pension scheme if they are employed under a short-term contract (generally for less than six months) or if they continue to be insured under the pension scheme of their country of origin (unless they are nationals of another Nordic country). In addition, workers must be of Danish nationality (or nationals of another Nordic country) in order to qualify for invalidity pensions (section 1(1)(i) of the Invalidity Pensions Act, Legislative Notification No. 156, of 15 April 1970, as amended), old-age pensions

(section 1(1)(i) of the Old-Age Pensions Act, Legislative Notification No. 155, of 15 April 1970, as amended), family allowances and maternity grants (section 11(1)(1) of Act No. 236 of 3 June 1967); the Minister may waive this condition of nationality under agreements concluded with other States. Finland: the following provisions secure equality of treatment: section 1 of the National Pensions Act of 8 June 1956 (LS 1956 - Fin. 2); section 1 of the Workers' Pensions Act of 8 July 1961 (LS 1961 - Fin. 4); section 1 of the Farmers' Pensions Act of 14 July 1969 (LS 1969 - Fin. 2); section 1 of the Invalidity Assistance Act, No. 907 of 30 December 1946 (LS 1946 - Fin. 7); section 1 of the Survivors' Pensions Act of 17 January 1969 (LS 1969 - Fin. 1); section 16 of the Employment Act, No. 946 of 23 December 1971 (LS 1971 - Fin. 1); section 4 of the Unemployment Funds Act of 23 March 1934 (LS 1934 - Fin. 3); section 1 of the Child Allowances Act, No. 541 of 22 July 1948 (LS 1948 - Fin. 3). The legislation of this country imposes the following restrictions based on nationality: branch (c): the report states that maternity benefit is only payable to mothers who are Finnish nationals (Maternity Benefit Act 424/41, text not available); branch (d): section 1 of the Invalidity Assistance Act limits coverage to Finnish citizens; branch (e): subsection 2 of section 23 of the National Pensions Act refers only to Finnish nationals; branch (h): section 1 of the Employment Act and section 4 of the Unemployment Funds Act limit coverage to Finnish citizens; branch (i): section 1 of the Child Allowances Act refers only to children possessing Finnish citizenship. Norway: as regards coverage, section 1, subsection 2, of the National Insurance Act, No. 12 of 17 June 1966, as amended (LS 1966 - Nor. 3; LS 1970 - Nor. 1 and LS 1971 - Nor. 2), secures full equality of treatment. As regards the right to benefits, on the other hand, the following provisions are restrictive: branch (a): the spouse and children under 18 years of a foreign worker employed on a Norwegian vessel (in coastal trade) but not resident in Norway will be entitled to medical benefit only if they are resident in Norway (same Act, section 2(1), point 2(a), whereas the spouse and children under 18 years of a Norwegian worker employed under the same conditions will be entitled to medical benefit even if they are not resident in Norway (section 2(1), point 2(b)). Branch (b): the grant of a maintenance supplement to the cash sickness benefit for the spouse or children under 18 years of a foreign worker employed on a Norwegian vessel (in coastal trade) but not resident in Norway is conditional upon the supported persons being resident in Norway (section 3(4), point 3, read in conjunction with section 2(1), point 2(a)), whereas in the case of a Norwegian worker employed under the same conditions this supplement is payable even if the supported persons are not resident in Norway (section 3(4), point 3, read in conjunction with section 2(1), point 2(b)); branch (c): the situation is the same in the case of the maintenance supplement to the cash maternity benefit (section 3(13), point 2); furthermore, the requirement that unmarried mothers must have accomplished a preceding insurance period in order to qualify for benefit (section 12(1)) may, in certain cases, be waived in favour of Norwegian nationals under the Royal Decree of 16 February 1973; branches (d) and (g): entitlement to invalidity benefits is conditional upon the accomplishment of a preceding insurance period (sections 8(1)(b) and 5(1)(b)); in certain circumstances this requirement may be waived for Norwegian nationals (section 2 of the regulations enacted by Royal Decree of 28 October 1966; the report states that these regulations are under revision to ensure equality of treatment between Norwegian and foreign nationals). This discrimination may also affect the maintenance supplement for a spouse, which will be payable only if the disability in question is not due to an employment injury (section 11(5), point 6); branch (h): foreign nationals employed in Norwegian border districts but not resident in Norway are not entitled to daily cash unemployment benefit (section 4(2), point 3(h); the report states that a new multilateral agreement

between the Nordic countries, which will not apply only to nationals of these countries, will do away with this exemption). Sweden: branches (d), (e) and (f): Ch. 5, section 1, of the National Insurance Act, No. 381 of 25 May 1962, as amended (LS 1962 - Swe. 1 and LS 1973 - Swe. 5), restricts entitlement to basic pensions to nationals; furthermore, Ch. 15, section 1, of the same Act contains provisions more favourable towards Swedish nationals born before 1924; branch (i): section 1 of the Family Allowances Act, No. 529 of 26 July 1947 (LS 1947 - Swe. 4 A), makes entitlement to benefits conditional upon Swedish nationality and residence in Sweden; non-national children qualify for family allowances subject to residence in Sweden under the guardianship of a person domiciled and registered in the country, or (cf. report) subject to the child or his/her parents being resident in Sweden for at least six months. Equality of treatment is thus largely secured in this branch (however, the length-of-residence condition is incompatible with the Convention, since para. 2 of Article 4 does not permit of such a condition in the case of family benefit).

17 This applies to the following British non-metropolitan territories: Antigua: branches (b), (c), (e) and (f): section 19 and the Second Schedule of the Social Security Act, No. 3 of 1972; branch (q), section 2, subsection 1 (definition of "worker") of the Workmen's Compensation Ordinance, No. 11 of 1957. Bermuda: branch (a): section 2, subsection 1, and section 17 of the Hospital Insurance Act, No. 523 of 24 December 1970; branches (e) and (f): sections 2, 4, 10 and 11 of the Contributory Pension Act, No. 283 of 18 December 1967; branch (q): sections 1 (definition of "worker") and 2 (definition of "dependants") of the Workmen's Compensation Act, No. 25 of 1 May 1965. British Solomon Islands: branch (c): section 76 of the Labour Ordinance; branch (q): sections 2 and 3 of the Workmen's Compensation Ordinance; branches (e) and (f): Ordinance No. 3 of 1973, for the establishment of the Solomon Islands National Provident Fund, also appears to grant equality of treatment (it was not possible to examine the full text of this Ordinance). British Virgin Islands: branch (g): sections 3 and 7 (definition of "worker") and section 2, subsection 2 (definition of "dependants") of the Workmen's Compensation Ordinance, No. 1 of 1962. Brunei: branch (g): sections 2 (definition of "worker"), 3 (definition of "dependants") and 7, and the schedule referring to benefits, of the Workmen's Compensation Enactment, No. 5 of 21 February 1957; branch (c): there likewise appears to be no discrimination on nationality grounds in the Labour Enactment, No. 11 of 1954, the full text of which was not available for examination. Dominica: branches (b), (c), (d), (e) and (f): section 19 and Schedule II of the Social Security Act, No. 38 of 1975 (this Act, which came into force on 1 February 1976, amends Act No. 18 of 1970 and provides for the extension of social security to branch (g) as from 1 January 1977). Falkland Islands (Malvinas): branch (a): sections 4, 5(c), 6, 9 and 10 of the Old Age Pensions Ordinance, No. 3 of 14 March 1952 (LS 1952 - Fal. 1), as amended; section 3 of the Non-Contributory Old Age Pensions Ordinance, No. 3 of 28 June 1961, as amended; branch (g): section 2, subsection 1 (definitions of "worker" and "dependants"), of the Workmen's Compensation Ordinance, No. 1 of 25 May 1960, as amended; branch (i): sections 3, 4 and 8 of the Family Allowances Ordinance, No. 9 of 6 October 1960, as amended. Gibraltar: branch (a): section 4 of the Group Practice Medical Scheme Ordinance, No. 14 of 23 May 1973; branches (c), (e) and (f): section 3 of the Social Insurance Ordinance, No. 14 of 1955, as amended; branch (g): sections 2 and 10 of the Employment Injuries Insurance Ordinance, No. 10 of 1952, as amended; branch (i): sections 3 and 5 of the Family Allowances Ordinances, Nos. 5 and 9 of 1959. As concerns non-contributory benefits, the Elderly Persons (Non-Contributory) Pensions Ordinance, No. 27 of 1973, is applicable to all persons ordinarily resident in Gibraltar (section 3); the Non-Contributory Social Insurance Benefit

Ordinance, No. 15 of 1955, applies to all British subjects or to all persons domiciled in Gibraltar (section 3; this Ordinance also makes provision for unemployment benefit). Guernsey: all branches: section 1 of the Social Insurance Law of 1964, as amended; sections 1-4 of the Family Allowances Law of 1950. Hong Kong: branches (b) and (c): section 3 of the Employment Ordinance of 1968 (LS 1968 - HK 1); branch (g): sections 2 (definition of "worker") and 3 (definition of "dependants") of the Workmen's Compensation Ordinance, No. 28 of 1953, as amended. Isle of Man: the legislation of the metropolitan territory is applicable to this territory (see under United Kingdom, footnote 15 above); equality of treatment is secured in respect of all branches. Jersey: branch (a): sections 1-4 and 15 of the Health Insurance Law, No. 12 of 8 June 1967; branches (b), (c), (d), (f) and (g): section 3 of the Social Security Law, No. 22 of 20 September 1974. It has not been possible to examine the Family Allowances Law of 1972. Montserrat: branch (g): section 2 (definitions of "worker" and "dependants") of the Workmen's Compensation Ordinance, No. 5 of 1957, as amended; branches (d), (e) and (f): it has not been possible to consult the National Provident Fund Ordinance, No. 14 of 1972; the report states that all social security benefits are equally payable to both nationals and non-nationals. St. Helena: branch (g): section 2, subsection 1 (definitions of "worker" and "dependants"), of the Workmen's Compensation Ordinance, No. 3 of 26 June 1946, as amended. Seychelles: (independent since 29 June 1976): branch (a): section 2 of the Employment of Servants Ordinance, No. 25 of 1945; branches (d), (e) and (f): sections 2 and 5 of the National Provident Fund Ordinance, No. 4 of 1971; branch (g): sections 2 and 3 of the Workmen's Compensation Ordinance, No. 12 of 1970. The report also refers to the Employment Benefits Ordinance of 1965 (which apparently covers branches (b) and (c)); it has not been possible to examine the text of this Ordinance.

It will be recalled that Norfolk Island - an Australian non-metropolitan territory for which a report was sent for the purposes of this survey - does not have legislation with respect to any of the branches covered by the Convention.

¹⁸ The countries in question are, for example, the following: Ecuador: branches (a), (b), (c), (d), (f) and (g) (foreign workers enjoying equivalent protection and temporary workers coming to work in Ecuador for a year or less are excluded from social security coverage). Italy: branch (e) (the "social pension" instituted under section 26 of Act No. 153 of 30 April 1969 is not payable to aliens) (it should be recalled that this country has accepted all the branches covered by the Convention).

¹⁹ ILC, 45th Session, Geneva, 1961, Report VIII(1), p. 77. The right of a State to restrict equality of treatment in the case of aliens residing within its borders is specifically excluded by the Equality of Treatment (Accident Compensation) Convention, 1925 (Article 1, para. 2); on the other hand, it is allowed by the Social Security (Minimum Standards) Convention, 1952, in the case of a non-contributory social security scheme for the protection of wage earners (Article 68, para. 1).

²⁰ ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary, p. 23; idem, RP, Appendix VIII, para. 23, p. 756. On the same subject, in reply to a request from the Department of Labour of Canada, the Office stated that "the preparatory work preceding the adoption of the Convention brings out that Article 4 is intended to ensure - subject only to the specific exceptions which it permits - that any residence condition which may govern the grant of benefit shall apply without distinction to a ratifying State's own nationals

and to nationals of any other State to whom, under Article 3, equality of treatment is due. The provisions of Articles 3 and 4, dealing with the question of equality of treatment as between nationals and non-nationals, are supplemented by the provisions of Articles 5 and 6, which go beyond this aspect of the question by defining the obligations of a ratifying State regarding the payment of benefits to beneficiaries (or in respect of children) resident abroad". (Memorandum by the International Labour Office, OB, Vol. XLIX, No. 3, July 1966, para. 5, p. 398.)

²¹ ILC, 45th Session, Geneva, 1961, Report VIII(1), p. 78.

²² ILC, 46th Session, Geneva, 1962, Report V(1), pp. 9-10, para. 33; *idem*, Report V(2), pp. 28-29, Office commentary.

Thus, for example, the conditions of residence imposed by the legislation of New Zealand for the grant of certain benefits do not appear to constitute an obstacle to ratification of the Convention in so far as those conditions are identical for nationals and non-nationals (Social Security Act 1964, as amended, sections 91 (branches (a) and (c) in Article 2(1) of the Convention); 54 (branch (b)); 41 (branch (d)); 14 and 17 (branch (e)); 21(2) and 28(1) (branch (f)); 58 (branch (h)); and 33 (branch (i))) (on the other hand, it is contrary to the Convention to differentiate in the manner provided for in subsection (1) of section 91 in favour of New Zealand citizens who are not permanent residents but who have been in the past).

²³ ILC, 45th Session, Geneva, 1961, Report VIII(2), p. 76, Question 15.

²⁴ ILC, 46th Session, Geneva, 1962, Report V(2), p. 24. Office commentary.

²⁵ These countries include, for example, Algeria (with regard to branches (a), (b), (c) and (i)); Argentina; Austria; Belgium (branches (a), (b), (c), (d), (g) and (h)); Burma; United Republic of Cameroon (branches (c), (d), (e) and (f)); Canada (branches (a), (b), (c), (d), (f), (g) and (i)); Costa Rica; Cuba; Cyprus; Czechoslovakia; Egypt; El Salvador; Greece (all branches except (g)); Guyana; Haiti; Hungary; Iceland; Indonesia; Japan; Malawi; Mexico; Morocco (branches (b), (c), (d), (e), (f) and (i)); Niger (branches (d), (e) and (f)); Panama; Paraguay; Peru; Portugal; Romania; Rwanda; Senegal (branches (c), (e), (f) and (i)); Sierra Leone; Singapore (branches (b), (c) and (g)); Somalia; Tanzania; Thailand; Uganda; USSR; United Kingdom; United States (branches (a), (b), (d), (e), (f) and (h)); Upper Volta; Yemen.

²⁶ This applies, for example, to Australia: contrary to a statement made in the report, the residence conditions established by section 3 of the Health Insurance Act, 1973-1976, and sections 21, 24, 25, 60, 83AA and C, 85(1)(b), 96, 107 and 108(b) and (i) of the Social Services Act 1947-1976 are compatible with Article 4 of the Convention because they apply to both nationals and non-nationals; Canada: the period of residence stipulated by section 7 of the Old-Age Act of 1951 are compatible with Article 4 of the Convention because they apply equally to nationals and non-nationals; Mauritius: branch (i): section 4(3) of Ordinance No. 62 of 1961.

²⁷ This applies, for example, to Algeria: branch (e): residence conditions incompatible with Article 4 of the Convention are established by section 39 of Decision No. 49-045 and the Decree of 29 June 1950 issued by the Governor-General of Algeria in respect of the non-agricultural sector, and section 31 of the Ordinance of 5 April

1951, relating to the agricultural sector; Australia: branch (c): section 86(1) of the Social Services Act 1947-1976 stipulates a period of residence longer than that authorised by subpara. 2(a) of Article 4 of the Convention; Belgium: branches (e) and (i): section 27 of Royal Order No. 50 of 20 October 1967, as amended on 1 April 1970, concerning the general system for employed persons; section 31(4) of Royal Decree No. 72 of 10 November 1967 and sections 144-146 of the Royal Decree of 22 December 1967 concerning retirement and survivors' pensions for self-employed persons; moreover, the report points out that, within certain limits, the general residence condition in respect of dependants' benefits is applied less rigidly with regard to Belgian children residing abroad than to non-Belgian children; this practice is incompatible with Article 4 of the Convention; Bulgaria: branches (d), (e) and (f): section 21(b) of the enabling regulation in respect of the Pensions Ukase No. 465 of 1957; United Republic of Cameroon: branch (g): section 57 of the Ordinance of 31 December 1959 and the governmental statement with regard to Convention No. 19; Greece: branch (g): section 5(2) of Act No. 551 of 31 December 1914 which still applies to foreign seamen; Luxembourg: branches (d), (e) and (f): sections 214 and 226 of the Social Insurance Code; Mauritius: branch (e): the period of residence stipulated by section 4 of Act No. 77 of 1961 is longer than authorised by subpara. 2(c) of Article 4 of the Convention; Spain: section 1, subsections (a) and (b), of the Resolution issued by the Directorate-General for Social Security on 15 April 1968; Switzerland: branches (d), (e) and (f): the residence conditions in respect of pensions established for foreigners by section 18(2) of the Old-Age and Survivors' Insurance Act (LAVS) and section 6 of the Disability Insurance Act (LAI) are incompatible with Article 4 of the Convention; the Committee feels it appropriate to point out that payment of the extraordinary pensions' benefit (section 42 of the LAVS and section 39 of the LAI) could be made conditional on compliance with the residence requirement established by para. 2 of Article 4 of the Convention, as this benefit is of the type foreseen in subpara. 6(a) of Article 2 of the Convention; United States: (branch (g): according to the report, a residence condition may be stipulated for foreigners with respect to industrial accidents; Uruguay: branches (d), (e) and (f): Act No. 13462 of 2 December 1965 establishes a ten-year residence condition for aliens.

²⁸ Morocco: branch (g): sections 146, 147, 162 and 163 of the Dahir of 6 February 1963; Niger: branch (g): section 105 of Decree No. 65-117 of 18 August 1965; Senegal: branch (g): section 94 of the Social Security Code of 1973.

²⁹ This applies, for example, in the following countries (the list of branches accepted by these countries can be found in Appendix I): Barbados (branch (g)); Brazil (branches (h) and (i)); Central African Empire (branch (f)); France (branch (h)); Federal Republic of Germany (branches (d), (e), (f) and (i)): equality of treatment is guaranteed, in principle, without any residence condition, in accordance with sections 1315(1) and 1317 of the Insurance Code (RVO), as amended, and corresponding provisions of the Workers' Insurance Act (AVG), as amended; section 1 of the Federal Children's Allowance Act of 14 April 1964 (BKGG), as amended in 1975; India (branches (e), (f) and (d)); Madagascar (branches (e) and (f)).

³⁰ This is the case, for example, in the following countries (the list of branches accepted by these countries can be found in Appendix I): Denmark: branches (c), (d), (e) and (i): the invalidity, old-age and widows' benefits, family allowances and maternity subsidy are reserved for Danish nationals. As these are benefits of a type foreseen in para. 6(a) of Article 2 of the Convention, it would be

possible to apply the provisions of para. 2 of Article 4, which permits the application of certain residence conditions to aliens (except as concerns family benefits, which are not covered by this provision). Moreover, with regard in particular to branches (d) and (e), the provisions of the national legislation respecting invalidity pensions (section 1(3) of Notification 156 of 15 April 1970) and old-age pensions (section 1(3) of Notification 155 of the same date) for Danish subjects only, in the event of residence abroad, should be extended to nationals of all the States which have ratified the Convention; France: branch (e): the residence condition imposed on aliens by sections L245 and L246 of the Social Security Code and 1027 of the Rural Code (even with the limitation on coverage, referred to in Letter No. 18090 of 11 April 1952 from the Ministry of Labour) is incompatible with Article 4 of the Convention, as is the residence condition, imposed under bilateral agreements concluded by France, on foreign recipients of the allowance for elderly employed persons (AVTS) and the allowance for elderly self-employed persons. Moreover, it would seem that the allowance for elderly employed persons (AVTS), the allowance for elderly self-employed persons and the allowances for mothers should be paid to nationals of those States which have ratified the Convention, without an obligation to have spent a certain period in France before making application, taking into account the definition given in para. 6(a) of Article 2 of the Convention. It would also seem that the special allowance foreseen in section 2 of Decree No. 52-1818 of 26 September 1952 should be paid to the nationals of these same States subject, in this case, to compliance with the residence conditions authorised by para. 2(c) of Article 4 of the Convention. As regards the supplementary allowance provided for in Article L685 of the Social Security Code, this should be paid to nationals of those same States (like the main allowance to which it is supplementary) without any requirement of residence in France before application, except when it is supplementary to the aforementioned special allowance (see also in this connection the comments made by the Committee in relation to Convention No. 35 [ECE, 1975 and 1977] and note No. 18 in paragraph 98 below); Sweden: branches (d), (e), (f) and (i): equal treatment is generally given without residence conditions, except as regards the payment of the basic pension to beneficiaries residing abroad, which is limited to Swedish nationals who lived in Sweden between the ages of 59 and 62. Equality of treatment for beneficiaries residing either abroad or in Sweden might be made subject to the residence conditions authorised by subparas. 2(b) and (c) of Article 4; on the other hand, the period of residence constituting a condition for equality of treatment in respect of family allowances (section 1 of the Act of 26 July 1947) is incompatible with the Convention because para. 2 of Article 4 does not authorise it in respect of family allowances.

³¹ This applies, for example, to the following non-metropolitan British territories: Antigua, British Solomon Islands, British Virgin Islands, Brunei, Dominica, Falkland Islands (Malvinas), Gibraltar, Hong Kong, Montserrat, St. Helena.

³² Bermuda (branch (e)): a residence condition exists which is applicable only to aliens, but this is in conformity with para. 2 of Article 4 of the Convention (subsection 1(b) of section 9 of Act No. 283 of 18 December 1967). In the other branches covered by the legislation of this territory ((a), (f), and (g)) equality of treatment is given without any residence condition.

³³ This applies, for example, to the following countries: Central African Empire, Denmark, Guinea, Madagascar, Surinam.

CHAPTER III
PAYMENT OF BENEFITS TO BENEFICIARIES
(OR IN RESPECT OF CHILDREN) RESIDENT ABROAD

5. Payment of benefits abroad

5.1. Concept and scope

85. The payment of benefits to beneficiaries resident abroad has been provided for in Article 5 of the Convention, which is worded as follows:

1. In addition to the provisions of Article 4, each Member which has accepted the obligations of this Convention in respect of the branch or branches of social security concerned shall guarantee both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch or branches in question, when they are resident abroad, provision of invalidity benefits, old-age benefits, survivors' benefits and death grants, and employment injury pensions, subject to measures for this purpose being taken, where necessary, in accordance with Article 8.

2. In cases of residence abroad, the provision of invalidity, old-age and survivors' benefits of the type referred to in paragraph 6(a) of Article 2 may be made subject to the participation of the Members concerned in schemes for the maintenance of rights as provided for in Article 7.

3. The provisions of this Article do not apply to benefits granted under transitional schemes.

86. The object of this Article is to guarantee the transfer to beneficiaries resident abroad of the benefits to which it relates; certain explanations are called for with respect to the scope of these provisions.¹

Benefits covered

87. Article 5 does not apply to all types of benefit in respect of which the obligations of the Convention may be accepted, but only to invalidity benefits, old-age benefits, survivors' benefits and death grants, and employment injury pensions.²

Beneficiaries and condition of reciprocity

88. The obligations under Article 5 in respect of any branch of social security for which a ratifying State has accepted the Convention are limited to its own nationals and the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch or branches in question.³ The condition of reciprocity admissible here is restricted in scope, i.e. applicable "branch by branch".

Place of residence

89. Where an obligation arises under Article 5 to pay benefits abroad, this obligation must be complied with, irrespective of where the beneficiary resides, and irrespective of the situation of the country of residence with respect to the Convention.⁴

"Non-contributory" benefits

90. In the case of invalidity, old-age and survivors' benefits payable under non-contributory schemes (within the meaning of paragraph 6(a) of Article 2 of the Convention), their payment to beneficiaries resident abroad may, by virtue of paragraph 2 of Article 5, be made subject to the participation of the Members concerned in schemes for the maintenance of rights as provided for in Article 7.⁵

Transitional schemes

91. Under the terms of paragraph 3 of Article 5, the provisions of that Article do not apply to benefits granted under transitional schemes.⁶

Relationship between Articles 5 and 8

92. The precise nature of the measures to be taken by governments to implement the requirements of Article 5 may vary, as is recognised by the reference in paragraph 1 to "measures being taken in accordance with Article 8".⁷

Relationship between Articles 5 and 4

93. Finally, attention is drawn to the fact that Article 5 begins with the words "In addition to the provisions of Article 4 ..."; these words were introduced to make it clear that Articles 4 and 5 lay down separate obligations in all cases where the aim of Article 5 has not already been achieved through application of Article 4.⁸

94. Consequently, and as regards the payment of benefits to beneficiaries resident abroad, Article 4 applies if for any one of the branches in respect of which a State has accepted the obligations of the Convention the legislation provides for the payment of benefits to nationals of that State who are resident abroad. On the other hand, Article 5 applies if at the time of the ratification or the acceptance of the obligations in respect of new branches, a State's legislation does not provide for the payment of the benefits cited in Article 5 to nationals of that State who are resident abroad.

5.2. Payment of benefits abroad in national law and practice

95. This section is devoted to the national legislation and practice of those States and non-metropolitan territories to which, under their current legislation, Article 5 of the Convention would apply.

96. The legislation of many countries which have not yet ratified Convention No. 118 and which submitted a report for this survey contains no territorial restrictions on payment of the benefits referred to in Article 5, when beneficiaries are resident abroad.⁹ However, these countries, whose legislation is formally in agreement with Article 5 of the Convention, are far from constituting a general rule. The legislation of a relatively large number of countries contains restrictions incompatible with the obligation to pay the relevant benefits when beneficiaries are resident abroad. These restrictions are of various types: in some cases, provision is made for the suspension of payments to persons resident abroad;¹⁰ in others, they are subject to the existence of a bilateral agreement with the country of residence of the beneficiary,¹¹ to prior authorisation,¹² to exchange control regulations¹³ or the appointment of a representative;¹⁴ in other cases, provision is made for conversion of the pension into capital.¹⁵

97. Particular reference should be made to the existence of legislation which, although providing for the suspension of benefit payments when a beneficiary is resident abroad, provides also that this suspension shall not apply where there exists an international agreement or convention; in principle, therefore, ratification of Convention No. 118 would be sufficient in such cases to prevent such suspension of payments.¹⁶

98. Regarding the branches dealt with in Article 5, whose obligations have not been accepted by States which have ratified the Convention, the need to pay benefits when beneficiaries are resident abroad appears to constitute the main obstacle to acceptance of these branches. Examination of the national legislations and practices shows that in only a few cases does the legislation fail to contain territorial restrictions which would prevent payment in the event of residence abroad;¹⁷ in most cases, on the contrary, there exist territorial restrictions incompatible with Article 5 of the Convention.¹⁸

99. The legislation of most of the non-metropolitan territories for which reports have been submitted, contains no territorial restrictions on the payment of benefits to beneficiaries resident abroad;¹⁹ in some of them, however, it is expressly stated that benefits will be suspended when persons are resident abroad.²⁰

100. Application of the provisions of Article 5 of the Convention has caused problems in some of the States which have ratified the Convention and accepted the obligation of one or more of the branches mentioned in that Article (the list of branches accepted will be found in Appendix I). The difficulties in application arise mainly from the requirement that the payment of benefits abroad is subject to the conclusion of an agreement or convention with the country in which the beneficiary is resident,²¹ determination of the contributory or "non-contributory" nature (as defined in paragraph 6(a) of Article 2 of the Convention) of certain benefits,²² conversion of the pension into capital when the beneficiary leaves the country,²³ and from certain arrangements concerning the payments of benefits when the

beneficiary is resident abroad.²⁴ These problems of application are commented on individually by the Committee.

6. Payment of family allowances in respect of children resident abroad

6.1. Concept and scope

101. The payment of family allowances in respect of children resident abroad is provided for in Article 6 of the Convention which reads as follows:

In addition to the provisions of Article 4, each Member which has accepted the obligations of this Convention in respect of family benefit shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of this Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.

102. Article 6 goes beyond the obligations laid down in Articles 3 and 4 of the Convention dealing with equality of treatment as between nationals and non-nationals in the strict sense, by defining the obligations of a ratifying State regarding the payment of family benefit in respect of children resident abroad.²⁵

Benefits covered

103. It is to be noted that Article 6 does not cover all family benefits (branch (i) in paragraph 1 of Article 2), but only "family allowances" - i.e. "periodical payments granted as compensation for expenditure for the maintenance of children, exclusive of certain special allowances, especially those granted to mothers remaining at home".²⁶

Beneficiaries and condition of reciprocity

104. The obligations of a ratifying State under Article 6 are limited to its own nationals and the nationals of any other State which has accepted the obligations of the Convention in respect of the branch concerned (i.e. family benefit). As in the case of Article 5, the condition of reciprocity laid down here is restricted in scope, that is to say "branch by branch".²⁷

Place of residence

105. In contrast to Article 5, which requires benefits within its scope to be paid wherever the beneficiary resides, Article 6 requires family allowances to be paid only in respect of children who reside on the territory of a state having accepted the obligations of the Convention in respect of family benefit.²⁸

"Non-contributory" benefits

106. Article 6 covers both contributory and "non-contributory" benefits (within the meaning of paragraph 6(a) of Article 2)²⁹

Relationship between Articles 6 and 4

107. The same relationship exists as between Articles 5 and 4; like Article 5, Article 6 begins with the words "In addition to the provisions of Article 4 ..." (see paragraph 93 above).

Nature of the obligation

108. The allowances mentioned in Article 6 are to be granted "under conditions and within limits to be agreed upon by the Members concerned". The report of the Committee on Social Security at the 46th Session of the Conference indicated that the aim of the Article was not to establish "a direct obligation arising only from the ratification of the Convention, but merely an indirect obligation, conditional on the conclusion of agreements among the member States concerned as to the conditions and the limits within which the guarantee referred to should be applied".³⁰

Payment abroad

109. Finally, it should be noted that Article 6 does not stipulate that family allowances must be paid abroad.

6.2. Payment of family allowances in respect of children resident abroad in national law and practice

110. Examination of the legislation and practices of States with legislation relating to family benefits, which have not ratified the Convention (or having done so, have not accepted branch (i)) shows firstly that there are few countries whose legislation does not formally require residence of the child on its own territory as a condition for the payment of family allowances.³¹

111. Furthermore, in most of the cases examined national legislation makes the payment of family allowances conditional on residence of the children on the territory of the State which grants the allowances; however, although in some cases no derogations from this residence condition appear possible,³² there are many States in which such derogations are possible.³³ The latter legislation is compatible with Article 6 of the Convention since the latter authorises the payment of family allowances being made subject to the conclusion of international agreements.

112. In a few cases, the information available was inadequate to show the degree of conformity between the national legislation and practices and Article 6 of the Convention.³⁴

113. It is useful to emphasise here that States whose social security systems are based on the principle of territoriality can avail themselves of the possibility offered by Article 9 of the Convention to have family allowances paid by the State on whose territory the children are residing.

114. Family allowances exist in very few of the non-metropolitan territories whose legislation was examined. None of them provides for the payment of family allowances in respect of children residing abroad. In most cases, there is a formal requirement that the children shall reside on the national territory;³⁵ in one case, exceptions to the general residence condition are possible³⁶ and in another, insufficient information was available.³⁷

115. Regarding the national legislation and practices of States which have ratified the Convention and accepted the obligations of branch (i),³⁸ the application of Article 6 of the Convention has given rise to practical problems on which the Committee has commented individually.³⁹ The difficulties encountered in the application of this Article stem mainly from the requirement that children shall reside on the territory of the member State in which the directly insured person is resident. The Committee considers it useful to point out in this connection that the provisions of Article 6 of the Convention can be applied "under conditions and within limits to be agreed upon by the Members concerned". The purpose of this flexibility clause is precisely to facilitate the conclusion of agreements making it possible to guarantee the granting of family allowances for children residing on the territory of one of these member States concerned.

Footnotes to Chapter III

¹ Reproduced hereafter are the relevant comments made by the Office in reply to a request from the Department of Labour of Canada for information regarding the precise scope of Articles 5 and 6 of this Convention (Memorandum by the International Labour Office, QB, Vol. XLIX, No. 3, July 1966, pp. 396-401; see, in particular, para. 6, pp. 398-399). These are accompanied, where appropriate, by comments that the Committee has thought fit to make with respect to matters of general interest which were raised by certain States in the reports supplied for the purpose of this general survey, or which came to light during the examination of the legislation of ratifying States.

² Mention should be made here of a particular problem of application that has arisen in connection with the payment abroad of death grants, regarding which the Committee made in 1974 a general direct request worded as follows:

The benefits listed by this provision of the Convention, which include death grants, must be paid in the case of residence abroad, not only to nationals of the country in question but also to nationals of any other member State which has accepted the obligations of the Convention in respect of the branch in question. The Committee notes that death grants, which are not dealt with in the Convention as a special branch of social security, are provided for in the legislation of some of the States for which the Convention is in force and are granted both when the death is of occupational origin and when it is not. In this latter case the death grants may be paid under the sickness benefits branch or under the survivors' benefits branch. Consequently, States which have accepted the obligations of the Convention in respect of branch (b) (sickness benefit) or branch (f) (survivors' benefit) and which provide in their legislation for the payment of a death grant in virtue of the branch in question must, in order to comply with the obligation of reciprocity laid down in the Convention when the death is not occupational in origin, ensure the payment of this benefit to persons resident abroad, whether they be nationals of the State concerned or nationals of Members which have accepted the

obligations of the Convention in respect of either of the two branches and have made provision in their legislation for the payment of a death grant under that branch. Individual comments are being sent to certain States which are under that obligation. According to the information available to the Committee, the list of States in question, the nationals of which can claim reciprocity, is at present: Brazil, Denmark, Ecuador, Federal Republic of Germany, Israel, Italy, Netherlands, Norway, Syrian Arab Republic and Tunisia.

As regards those countries whose system of social protection as far as employment injuries are concerned is still little developed, it is of interest to recall that under the terms of para. 1 of Article 5 of the Convention they are required to provide abroad only "pensions" - i.e. benefits payable at regular intervals on a permanent basis - and not the temporary allowances or lump-sum grants sometimes awarded as the only form of compensation in the event of permanent incapacity resulting from an employment accident or occupational disease. Death grants also have to be paid abroad.

3 The Committee considers it necessary to emphasise that under the terms of Article 5 of the Convention, it is necessary to guarantee provision of the benefits in question to the beneficiaries themselves. While there may be various methods of guaranteeing payment, the necessary steps must be taken to ensure that benefits are paid to the beneficiaries themselves in all cases (see, in this connection, the direct requests addressed to Brazil and Israel in 1974 and 1976).

4 The basic decision of principles with respect to this matter was taken during the first discussion of the Convention at the Conference in 1961, namely that "the provision of benefit abroad should be made subject to a condition of reciprocity based solely on the nationality of the beneficiary, irrespective of the situation of his country of residence with regard to the Convention" (ILC, 46th Session, Geneva, 1962, Report V(1), p. 12, para. 39 and Report V(2), p. 32). This decision was confirmed during the second discussion in 1962, when the Committee on Social Security rejected a proposal that the obligations laid down in Article 5 should be restricted to cases "where the beneficiaries were resident within the territory of the a member State which had accepted the obligations of the Convention". It was then pointed out that "it would not be fair to make the rights of the beneficiaries dependent upon their place of residence"; some members of the Committee stressed "the social advantages of the principle of personal rights to benefit" (ILC, 46th Session, RP, Appendix VIII, para. 34, p. 757).

5 Attention is drawn to the difference in the terms applicable to "non-contributory" benefits (within the meaning of para. 6(a) of Article 2), the provision of which may be made subject to participation in schemes for the maintenance of rights, and to benefits of the type referred to in para. 1 of Article 5, the payment of which abroad may not be made subject to the conclusion of an agreement or instrument as provided for in Article 8. This difference is important in practice, especially as concerns the prospects for ratification of the Convention. For instance, the fact that the invalidity, old-age and survivors' pensions provided for in the New Zealand Social Security Act 1964, as amended, are not payable abroad is not contrary to Article 5 of the Convention because these are non-contributory benefits. All that would be required of the country concerned, if it ratified the Convention, would be to endeavour in good faith to participate in a scheme for the maintenance of rights as provided for in Article 7.

6 The term "benefits granted under transitional schemes" has been defined in clause (c) of Article 1 of the Convention (see para. 23 above). Para. 3 of Article 5 was adopted with a view to maintaining consistency with para. 3 of Article 4.

7 It was considered unnecessary to add to para. 1 a mention, as suggested by one government, that its requirements might be met by unilateral decision since it was considered clear that this was one of the methods by which its provisions could be implemented (ILC, 46th Session, Geneva, 1962, Report V(2), p. 31).

The Government of Belgium asked a general question in its report as to whether the application of para. 1 of Article 5 might be made subject to the existence of agreements such as those provided for in Article 8, to which reference is made at the end of this paragraph ("subject to measures ..."), or whether the benefits in question had to be paid even in the absence of any such agreement, their purpose being merely to determine the manner of payment. Bearing in mind both the preparatory proceedings and the text of the Convention itself, the Committee has taken the view that the aforementioned phrase in para. 1 of Article 5 does not allow payment abroad to be made subject to the conclusion of agreements of the type provided for in Article 8, though such a possibility can be allowed for exceptionally in the case of the "non-contributory" benefits (within the meaning of para. 6(a) of Article 2) to which reference is made in para. 2 of Article 5 (see ILC, 46th Session, Geneva, 1962, RE, Appendix VIII, paras. 32 and 33, p. 757).

8 ILC, 46th Session, 1962, Report V(1), p. 26, and Report V(2), p. 30. It was also pointed out that the provisions of para. 1 of Article 5, "which go beyond the strict limits of legal equality of treatment, were conceived ... in order to make it compulsory to provide the benefits listed in this paragraph to beneficiaries living abroad even in cases where national legislation does not cover such a contingency and where the provisions of Article 4 concerning equality of treatment cannot therefore serve for the same purpose".

9 This is the case, for example, for the following countries: Algeria: branches (d), (e) and (f); the Committee reserves its opinion with regard to branch (g); Argentina: branches (d), (e), (f) and (g); Bulgaria: branch (g); Costa Rica: branches (d), (e), (f) and (g); Cyprus: branches (d), (e), (f), and (g); Egypt: branches (d), (e), (f) and (g); El Salvador: branches (d), (e), (f) and (g); Greece: branches (d), (e), (f) and (g); Haiti: branches (d), (e) and (f); Iceland: branches (d), (e), (f) and (g); Iran: branches (d), (e), (f) and (g); Malawi: branch (g) (there are territorial restrictions on the payment of death grants; the legislation makes no provision regarding the payment of pensions); Mauritius: branches (e) (reference can be made to para. 2 of Article 5) and (g) (regarding death grant); Mexico: branch (g); Morocco: branches (d), (e) and (f); Panama: branches (d), (e), (f) and (g); Sierra Leone: branch (g) (there are no territorial restrictions regarding the payment of the death grant; the legislation makes no provision regarding the payment of pensions); Tanzania: branch (g) (there are no territorial restrictions regarding payment of the death grant; the legislation makes no provision regarding the payment of pensions); Thailand: branch (g); United States: branches (d), (e) and (f).

10 This applies, for example, in the following countries: Australia: branches (d), (e) and (f): pensions, which are of the type foreseen in para. 6(a) of Article 2 of the Convention, are not paid unless the beneficiary left Australia after 8 May 1973 and if the contingency arose since departure (sections 21A, 24A, 60A and 83AB of

the Social Services Act 1947-1973) (the Committee considers it useful to point out that, contrary to what is stated in the Government's report, Article 5 of the Convention does not require the payment abroad of benefits for temporary incapacity); Austria: branches (d), (e), (f) and (g): payment is suspended in the event of residence abroad for a period of more than two years (section 89, subsections (1) and (2) of the General Social Security Act (ASVG)); Belgium: branches (d), (e) and death grants (section 70 of the Act of 9 August 1963); Bulgaria: branches (d), (e) and (f): benefits are paid abroad for only six months (section 21(d) of the enabling regulations for the Pensions Act, No. 465 of 1957); Canada: branch (e): old-age pensions under the basic system are paid for only six months in the event of residence abroad (section 7 of the Old-Age Insurance Act of 1951); Haiti: branch (g): benefits are suspended in the event of residence abroad and are not paid to survivors residing abroad (section 84 of the Act of 28 August 1967); Japan: branches (d), (e) and (f): national pensions are paid only to persons resident in the country (section 7 of Act No. 141 of 16 April 1959); Luxembourg: branches (d), (e) and (f): in the event of residence abroad, the fixed fractions, special increases and supplementary pensions are not paid (section 225 of the Social Security Code; section 75 of the Act of 29 August 1971; section 19 of the Act of 21 May 1951; section 19 of the Act of 3 September 1956), neither are benefits from the National Solidarity Fund (section 2 of the Act of 30 July 1960); New Zealand: branches (d), (e), (f) and (g) (as regards miners): benefits under the Social Security Act 1964-1975 are suspended in the event of residence abroad, except in special cases (section 77; as these are benefits of a type foreseen in para. 6(a) of Article 2 of the Convention, it would be possible to apply para. 2 of Article 5); Paraguay: branches (d), (e) and (g) (section 83 of Legislative Decree No. 1860 of 1 December 1950); Switzerland: branches (d), (e) and (f): the extraordinary pensions are paid only to Swiss subjects residing in the country (section 42 of the Old-Age and Survivors' Insurance Act (LAVS) and section 39 of the Invalidity Insurance Act (LAI)); United Kingdom: branches (d), (e), (f) and (g): pensions payments are suspended in the event of residence abroad, except as provided to the contrary by regulations (section 82(5) (a) of the Social Insurance Act of 1975).

¹¹ This is the case, for example, in Czechoslovakia, Hungary and Romania.

¹² This applies, for example, to the following countries: Argentina: branches (d), (e) and (f) (Act No. 16961 of 26 September 1966 and Decree No. 2273 of 26 September 1966, supplemented by Decree No. 1917 of 21 October 1970); Cuba: branches (d), (e), (f) and (g): the right to benefits ceases when the beneficiary leaves the territory without authorisation from the Ministry of Labour (section 64(e) of Act No. 1100 of 27 March 1963, as amended); Luxembourg: branches (d), (e) and (f): payment of that part of the pension drawn from the Employees' Fund is suspended if the beneficiary resides abroad without authorisation from the Fund (section 75(b) of the Act of 29 August 1951).

¹³ For example, in Burma, the payment of benefits abroad is subject to exchange regulations, under section 212 of the Social Security Act, No. 67, of 1954.

¹⁴ For example, Guyana: branches (d), (e), (f) and (g): benefits can be paid only in Guyana to a person designated by the beneficiary (section 42 of the benefits regulations; section 42 of the regulations in respect of occupational hazards benefits); Somalia: branch (g): beneficiaries have to designate a person in Somalia (section 96 of the Act of 7 December 1972). In Peru, it is possible in the cases of

branches (d), (e) and (f) to nominate a person to receive payments (section 68 of Supreme Decree No. 011-74-TR of 31 July 1974); this provision would not conflict with Article 5 of the Convention if the beneficiary could choose to have payments made directly at his place of residence, without having to pass through a representative.

¹⁵ In Indonesia, for example, with regard to branch (g), the legislation permits conversion of the pension into capital upon leaving the country (section 13(1)(b) of Act No. 2 of 6 January 1951); in New Zealand, with regard to branch (f) (pensions on account of accidents in general) and branch (g), it is possible to convert the pension into capital if residing abroad (section 130 of the Accident Insurance Act of 1972); in Uruguay, with regard to branch (g), both nationals and aliens may convert a pension into capital (section 63 of the Act of 28 February 1941).

¹⁶ This applies, for example, in the following countries: United Republic of Cameroon: branches (d), (e) and (f) (section 20(2) of the Act of 10 November 1969); Mexico: branches (d), (e) and (f) (section 126 of the Social Security Act of 1973); Niger: branches (d), (e) and (f) (section 23(2) of Decree No. 67-25 of 2 February 1967); Portugal: branches (d), (e) and (f) (section 187 of Decree No. 45266 of 23 September 1963).

¹⁷ This applies, for example, to the following countries: India: branches (e), (f) and (g) (however, it is stated in the report that there is a restriction with regard to branch (g), due to the exchange control regulations); Madagascar: branches (e) and (f); Senegal: branches (e) and (f).

¹⁸ This is the case, for example, in the following countries: Barbados: branches (d), (e) and (f): benefits are paid only during the period authorised by the competent authority (section 48(1)(c) of the National Insurance and Social Security (Benefits) Regulations of 1967); the entitlement to benefits must have been established before the insured person leaves the country (section 48(2) of the aforementioned regulations; this provision would not be in conformity with Article 5 of the Convention if the invalidity occurred before the person concerned left the country; benefits are paid to the designated agent in Barbados (section 49 of the aforementioned regulations); Central African Empire: branch (f): payment of benefits abroad is subject to the conclusion of bilateral agreements (according to the report under article 22 of the ILO Constitution), whilst para. 1 of Article 5, which applies in this case, stipulates that there shall be full entitlement to benefits; Denmark: branches (d), (e) and (f): the condition of residence after receipt of the pensions, to which reference is made in section 1(1)(ii) of the Acts of 15 April 1970 (Legislative Notifications Nos. 155 and 156) and section 2(1)(ii) of the Act of 15 April 1970 (Legislative Notification No. 157) should not be applicable to either Danish citizens or to the nationals of any other States which accept the obligations of the corresponding branches, to the extent that Denmark participates in a system for the maintenance of rights (para. 2 of Article 5 of the Convention). Federal Republic of Germany: branches (d), (e) and (f): except as provided to the contrary, the payment of invalidity, old-age and survivors' benefits is suspended in the event of residence abroad (sections 1315(1) and 1317 of the Insurance Code (RVO)); however, exceptions can be made to the principle of suspension in the case of a foreign State or frontier area of a foreign State whose legislation guarantees reciprocity (RVO, section 1316). France: branch (e): mothers' allowances, which are paid only in France (section L650 of the Social Security Code and section 22 of Decree No. 73-938 of 2 October 1973), should be paid in the event of residence abroad to both French

nationals and nationals of those States which have accepted the obligations of this branch; the special allowance (section 2 of Decree No. 52-1098 of 26 September 1952) should be paid to the same persons, in the event of residence abroad, subject to the condition, in this case, of participation by the members concerned in a scheme for the maintenance of rights (para. 2 of Article 5 of the Convention); the supplementary allowance (section L685 of the Social Security Code), like the main benefit, should be paid to the same persons, when residing abroad, subject to the condition in this case, when it is supplementary to the main benefit, of participation in a scheme for the maintenance of rights. Rwanda: branches (d), (e), (f) and (g): benefit payments are suspended upon residence abroad, except where there are reciprocity agreements or international conventions (section 44 of the Legislative Decree of 22 August 1974 respecting the organisation of social security); if Convention No. 118 has been ratified, this provision would permit derogations from the principle of suspension. Sweden: branches (d), (e) and (f): payment of basic pensions should be guaranteed when the beneficiary is residing abroad; however, as it is a question of benefits of the type foreseen in para. 6(a) of Article 2, payment of these benefits might be made subject to participation by the member States concerned in a scheme for the maintenance of rights (para. 2 of Article 5 of the Convention).

¹⁹ This is the case, for example, in the following British non-metropolitan territories: Antigua, British Solomon Islands, British Virgin Islands, Brunei, Hong Kong, Montserrat, St. Helena.

²⁰ This is the case, for example, in the following British non-metropolitan territories: Bermuda: branch (e): pension payments are suspended in the event of residence abroad (section 14(2) of Act No. 283 of 18 December 1967); as these are benefits of the type foreseen in para. 6(a) of Article 2 of the Convention, their payment abroad could be made subject to participation in a scheme for the maintenance of rights (para. 2 of Article 5 of the Convention). Gibraltar: branches (d), (e) and (f): pension payments are suspended after six months' residence abroad (section 23(1)(a) of the Social Security Ordinance, No. 14, of 1955); branch (g): in principle, pension payments are suspended in the event of residence abroad (Ordinance No. 10 of 1952 in respect of industrial accidents and occupational diseases). Falkland Islands (Malvinas): branch (e): pension payments are suspended in the event of residence abroad (section 7(2)(c) of Ordinance No. 7 of 1961); as these are benefits of the type foreseen in paragraph 6(a) of Article 2 of the Convention, their payment abroad could be made subject to participation in a scheme for the maintenance of rights (paragraph 2 of Article 5 of the Convention).

²¹ For example, Brazil, Central African Empire, Guinea, Mauritania.

²² For example, Italy ("social pension" instituted by section 26 of Act No. 153 of 30 April 1969), Norway (basic pensions awarded under the National Security Act, No. 12, of 17 June 1966, as amended).

²³ For example, Syrian Arab Republic (section 94 of Act No. 92 of 1959, as amended by Act No. 143 of 1961).

²⁴ For example, Brazil (designation of an agent: section 148 of the General Social Security Regulations, as amended by Decree No. 72-771/73); Zaire (benefits can be paid into a bank account in Zaire: section 98bis of Order No. 8/61 of 21 October 1961).

²⁵ Reproduced hereafter are the relevant comments made by the Office in reply to a request from the Department of Labour of Canada

for information regarding the precise scope of Articles 5 and 6 of this Convention (Memorandum by the International Labour Office, OE, Vol. XLIX, No. 3, July 1966, pp. 396-401; see, in particular, paras. 8-10, pp. 399-400). These are accompanied, where appropriate, by comments that the Committee has thought fit to make with respect to matters of general interest which were raised by certain States in the reports supplied for the purpose of this general survey, or which came to light during the examination of the legislation of ratifying States.

²⁶ ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, para. 37, p. 758.

²⁷ In its report the Government of Belgium asked a general question as to whether the family allowances referred to in Article 6 of the Convention also had to be paid in respect of the children of refugees and stateless persons resident abroad. The reply is in the affirmative, since the provisions of this Article are applicable to refugees and stateless persons without any condition of reciprocity (see para. 1 of Article 10).

The Government of New Zealand mentions as one of the obstacles to ratification the fact that the national legislation on family allowances does not take account, in principle, of children born outside the national territory (Social Security Act 1964, as amended, section 33(a); see also sections 28(1) and 21(3)). In the Committee's opinion these provisions do not constitute discrimination on the basis of nationality within the meaning of the Convention (see para. 61, footnote 10, above).

²⁸ The discussions in the Committee on Social Security at the Conference in 1962 show that the reference in Article 6 to residence "on the territory of any such Member" was intended to cover residence on the territory either of the State granting the allowances or of any other State having accepted the obligations of the Convention in respect of family benefit (ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, para. 37, p. 758).

²⁹ ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, para. 37, in fine, p. 758.

³⁰ The Committee further indicated that this obligation was conceived in the same spirit as that contained in Article 7, which implied "that the Members concerned should undertake to apply the principle stated in this Article by reaching an agreement to this effect whatever its nature or form, and that the failure to reach such agreement, duly noted, should not be construed as a failure to carry out the contractual obligations contained in the Article" (RP, Appendix VIII, para. 37, p. 758). As generally in relation to the implementation of obligations under international instruments, the States concerned would have to endeavour in good faith to reach agreement on the subject matter of Article 6, and their action in this regard would be subject to examination by the bodies responsible for supervising the application of ratified Conventions.

³¹ This applies, for example, to Bolivia (the Social Security Code of 14 December 1956 does not preclude the payment of family allowances in cases of residence abroad); Bulgaria (Decree No. 134 of 1968); Costa Rica (Decree No. 4674-355 of 28 March 1975, issued in application of Act No. 5662 of 16 December 1974); Iran (cf. report and sections 86 and 87 of the Social Security Act of 1972); Madagascar (section 130(1)(c) of the Social Security Code); Niger (section 5(3) of Decree No. 65-116 of 18 August 1965); Peru (Presidential Decree No. 001-73-PM-NAP in respect of public employees); Switzerland (section

1(2) of the enabling regulations of 11 November 1952 under Federal Act of 20 June 1952); however, it is pointed out in the report that some territorial restrictions still exist in cantonal legislation; USSR (the legislation examined contains no restrictions on the payment of family allowances in respect of children residing abroad).

³² This is the case, for example, in Algeria (section 2 of the Decree of 10 June 1941); Australia (section 96(6)(i) of the Social Services Act); United Republic of Cameroon (section 1 of the Act of 12 June 1967); Canada (section 2(1) - definition of the term "child" - of the Act of 1973 in respect of family allowances); Finland (cf. report); Gabon (section 46 of the Social Security Code - Law No. 6-75 of 25 November 1975); German Democratic Republic (section 1 of the Order of 4 December 1975 and section 3 of the first enabling regulations in respect of that Order); Japan (section 4 of Act No. 73 of 27 May 1971); Mauritius (sections 2 and 4 of Ordinance No. 62 of 28 December 1961); Paraguay (section 263(d) of the Labour Code); Poland (cf. report); Senegal (section 3 of the Social Security Code); Sweden (section 1 of the Act of 26 July 1947); Upper Volta (section 61(2) of the Act of 28 December 1972; dependent children are taken to be those living with the insured person).

³³ This applies, for example, to Austria (section 5(4) of the Family Charges Compensation Act of 24 October 1967); Belgium (sections 51(3) and 52 of the Consolidated Family Allowances Act, i.e. the Act of 4 August 1930 as amended; section 27 of the Royal Decree of 8 April 1976, issued in application of the Act of 20 March 1976). The Government points out in its report that Article 6 of the Convention has the effect of putting Belgian children in the less favourable situation foreseen for aliens under bilateral agreements. This is not the case: firstly, because ratification of this Convention could not result in workers receiving less favourable conditions than those guaranteed them by national legislation (para. 8 of article 19 of the Constitution of the International Labour Organisation); secondly, because Convention No. 118 ensures that non-nationals receive the same treatment as nationals, and not the opposite; Czechoslovakia (section 20 of the Act of 27 June 1968 and section 31 of the Act respecting Social Security in Agricultural Co-operatives); Denmark (section 11(1) (2) of Act No. 256 of 1967 makes the payment of family allowances subject to residence of the children in Denmark; however, there is provision in section 7 of Ch. III of Regulations No. 1408/71/EEC for the payment of family allowances to employed persons and persons treated as such, covered by Danish legislation, in respect of children living on the territory of another member State of the EEC); Hungary (the report states that Article 6 of the Convention applies to bilateral agreements); Luxembourg (section 6 of the Act of 29 April 1964 requires, in principle, residence in the country; derogations from this principle have been made through international agreements); Mali (section 10 of the Social Security Code); Malta (section 73(4) of National Insurance Act No. VI of 1956, as amended by Act No. LIII of 1974); Morocco (section 40, subsections (1) and (2) of the Dahir having force of law, No. 1-72-184, of 27 July 1972, and section 6 of the Decree of 30 December 1972); Portugal (section 58, subsections (1) and (5) of Decree No. 45266 of 23 September 1963; as the derogation authorised can benefit only aliens, it should be extended to nationals in order to comply with Article 6 of the Convention); Spain (the report points out that family allowances are paid only in respect of children residing abroad when this is provided for in the corresponding bilateral agreement); United Kingdom (sections 20, 21 and 22 of the Family Allowances Act of 1965, as amended).

³⁴ This applies, for example, to Argentina (it is not clear whether or not family allowances are paid in respect of children

residing abroad. Act No. 18017 of 1968 contains no indications in this respect, nor any restriction and the report does not refer to this matter. However, Resolution No. 1048 of 12 November 1973 of the Commercial Employees' Family Allowances Fund refers to section 2 of Resolution No. 10/58, which provides for the withholding of family allowances when children are permanently resident abroad); Brazil (it is not clear whether or not family allowances are paid in respect of children living abroad; see section 7 of Decree No. 53153 of 10 December 1963); Greece (it was not possible to examine the legislation relating to this branch); Panama (according to the report, family allowances are payable to nationals and aliens working in the country; it was not possible to examine the relevant legislation); Romania (the information available is not sufficient to establish whether family allowances are paid when children are residing outside Romania).

³⁵ This concerns the following British non-metropolitan territories: Gibraltar (Ordinances Nos. 5 and 9 of 1955); Guernsey (section 22(3) and (5) of the Family Allowances Act of 1950); Falkland Islands (Malvinas) (section 17(2) of Ordinance No. 9 of 6 October 1960).

³⁶ This relates to the Isle of Man, a British non-metropolitan territory, in which United Kingdom legislation is applied.

³⁷ This relates to Jersey, a British non-metropolitan territory whose Family Allowances Act of 1972 could not be examined.

³⁸ See Annex I.

³⁹ This relates, for example, to the Central African Empire, Guinea, Ireland, Israel, Italy, Mauritania and Norway.

CHAPTER IV

MAINTENANCE OF RIGHTS

7. Concept and scope

116. According to Article 7 of the Convention, member States shall endeavour to participate in schemes for the maintenance of rights; this provision requires certain clarifications.¹

Nature of the obligation

117. Member States ratifying this Convention are merely under the obligation to endeavour to participate in schemes for the maintenance of rights (Article 7, paragraph 1), and the failure to reach such agreement should not be construed as a failure to carry out the contractual obligations contained in the Article.²

Persons and rights covered

118. The rights covered by the maintenance scheme comprise both acquired rights and rights in course of acquisition under the legislation of the nationals of Members for which the Convention is in force (Article 7, paragraph 1). The terms "acquired rights" and "rights in course of acquisition" do not require clarification. It should, however, be stressed that the scheme for the maintenance of rights in which ratifying States are to endeavour to participate must include not only nationals of other Members who have accepted the obligations of the Convention in respect of a given branch, but must also cover nationals of all member States for which the Convention is in force.

Branches covered

119. The system of maintenance of rights must cover all branches of social security in respect of which the Members concerned have accepted the obligations of the Convention (Article 7, paragraph 1).³

Totalisation of periods

120. Schemes for the maintenance of rights must provide, in particular, for the totalisation of periods of insurance, employment or residence and of assimilated periods for the purpose of the acquisition, maintenance or recovery of rights and for the calculation of benefits (Article 7, paragraph 2). The purpose of the totalisation of periods is to guarantee to migrants security as complete as that available for persons who have never left the country of which they are nationals, and to ensure that the working lives of migrants shall as

far as possible entitle them to the same benefits as normal employment in the territory of a single country. In particular this method avoids the possible drawbacks of transition from one scheme to another.*

Cost of benefits

121. The cost of invalidity, old-age and survivors' benefits as so determined shall either be shared among the Members concerned, or be borne by the Member on whose territory the beneficiaries reside, as may be agreed upon by the Members concerned (Article 7, paragraph 3). This provision refers exclusively to long-term benefits.⁵ As the Convention admits of two different solutions (sharing of costs or costs to be borne by the State where the beneficiaries reside), it is possible that two Members each advocating a different solution may not reach an agreement; in this case, the inability to reach an agreement could not be interpreted as non-compliance with the obligations assumed under this Article.⁶

Footnotes to Chapter IV

¹ In its report submitted for the purposes of the present survey the Government of Cyprus has requested a more detailed explanation of the extent of the obligations imposed by Article 7 on ratifying States, and the measures to be taken for its application. The Committee has taken particular account of this request in formulating the remarks in this chapter.

² ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, paras. 37 and 38, p. 758. It will be recalled that the draft Convention stated that "Members shall participate ...". This wording was replaced at the second discussion by "shall endeavour to participate" with a view to attenuating the expression of the obligation laid on member States (*ibid.*, para. 38). The phrase "upon terms being agreed by the Members concerned in accordance with Article 8" was introduced for the purpose of avoiding the imposition of rigid obligations which might be difficult to give effect to (*ibid.*, Report V(I), Ch. II, Article 7, pp. 26-27).

³ This provision is the result of a compromise between a view according to which the Convention should provide for the totalisation of periods and the sharing of the cost as regards all the kinds of benefit covered by the Convention, and another view in which it was considered that provision should be limited only to certain kinds of benefit; the compromise adopted consisted in providing for the totalisation of periods as regards all the kinds of benefits covered by the Convention but that it should refer to cost sharing only as regards invalidity, old-age and survivors' benefits (ILC, 45th Session, Geneva, 1961, Report VIII(2), Ch. II, Question 18, p. 78).

* ILC, 45th Session, Geneva, 1961, Report VIII(I), p. 81.

In reply to a request from a government regarding the precise meaning of the term "assimilated periods", the Office, after recalling that the use of the term did not give rise to any comments in the preparatory work of the Convention, noted that "generally, the concept of periods 'assimilated' to periods of insurance, employment or residence, is taken to refer to any periods which, although the person concerned has not paid contributions to the scheme or has not been employed or has not been resident, as the case may be, are taken into account by national legislation for the purposes of acquisition, maintenance or recovery of rights and for calculation of benefits ...

The existence and scope of such 'assimilated periods' depends on national legislation. The Convention merely requires that, where such 'assimilated periods' are provided by national legislation, they should be taken into account for the purposes of Article 7, both in the case of nationals and in the case of non-nationals" (Memorandum by the International Labour Office, OB, Vol. XLVI, No. 3, July 1963, paras. 7-12, pp. 469-470).

⁵ As a result of the compromise mentioned above (see para. 119 and note No. 3 above).

⁶ ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary, pp. 33-34.

CHAPTER V

MISCELLANEOUS PROVISIONS

8. Methods of giving effect to Articles 5 and 7

122. The Members for which this Convention is in force may fulfil their obligations under the provisions of Articles 5 and 7 by ratification of the Maintenance of Migrants' Pension Rights Convention, 1935, by the application of the provisions of that Convention as between particular Members by mutual agreement, or by any multilateral or bilateral agreement giving effect to these obligations (Article 8).

Choice of methods

123. Members are explicitly accorded latitude to select whichever of the proposed methods afford the best means of carrying out the obligations they have assumed; the order in which the measures which may be taken in accordance with the provisions of Article 8 are shown is purely a matter of form and it does not affect the freedom of choice available to Members under the terms of this Article.¹

Relationship between Article 8 and Articles 5 and 7

124. The measures indicated in Article 8 are not necessary when a Member meets the requirements of paragraph 1 of Article 5 by unilateral decision.² However, as a scheme for the maintenance of rights cannot be set up without the participation of two States or more, application of the provisions of Article 7 must necessarily be ensured through one of the methods provided for under Article 8. In respect of both Articles 5 and 7, failure to reach an agreement should not be construed as a failure to carry out the obligations laid down in both Articles.^{3,4}

The 1935 Convention (No. 48)

125. Ratification of the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), is mentioned in Article 8 as one of the methods of giving effect to the obligations laid down in Articles 5 and 7; the absence of such ratification does not constitute an obstacle to ratification of Convention No. 118.⁵ It should also be recalled that as the 1935 Convention refers merely to invalidity, old age and death, its ratification will permit compliance with the provisions of Articles 5 and 7 solely in respect of these branches.⁶

9. Possible derogations

126. The provisions of this Convention may be derogated from by agreements between Members which do not affect the rights and duties of other Members and which make provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention (Article 9).

127. This provision was based on Article 19 of the Maintenance of Migrants' Pension Rights Convention, 1935, and was designed to facilitate the ratification of Convention No. 118 and the application of its principles, in particular in regard to Article 5, taking account of the variety of methods used for the purpose of maintenance of acquired rights in certain bilateral and multilateral agreements on social security. In particular, this provision made it possible to consider that the social security agreement concluded among the Nordic countries on 15 September 1955 and the social security agreements concluded among the countries of Eastern Europe on the basis of the principle of territoriality were compatible with the obligations provided for by Convention No. 118.⁷

10. Mutual administrative assistance

128. The Members for which this Convention is in force shall afford each other administrative assistance free of charge with a view to facilitating the application of the Convention and the execution of their respective social security legislation (Article 11).

129. The expression "administrative assistance" or "mutual administrative aid" is customary in social security Conventions and denotes any services which Members may have occasion to render one another at an administrative level, especially in relations between social security institutions, to facilitate the application of the Convention.⁸

11. Date of application of the Convention

130. The provisions of this Convention generally apply to benefits payable after its coming into force for the Member concerned, as regards contingencies arising after its entry into force. Furthermore, to avoid subsequent difficulties of interpretation, it was thought convenient to specify the obligations of Members bound by the Convention as regards benefits payable before the coming into force of the instrument, as well as benefits payable after its entry into force in respect of contingencies arising previously.

Benefits payable prior to the coming into force of the Convention

131. This Convention does not apply to benefits payable prior to the coming into force of the Convention for the Member concerned in respect of the branch of social security under which the benefit is payable (Article 12, paragraph 1).

Benefits payable after the coming into force of the Convention

132. The extent to which the Convention applies to benefits attributable to contingencies arising before its coming into force for the Member concerned in respect of the branch of social security under which the benefit is payable thereafter shall be determined by multilateral or bilateral agreement or in default thereof by the legislation of the Member concerned (Article 12, paragraph 2).⁹

Footnotes to Chapter V

¹ ILC, 46th Session, Geneva, 1962, Report V(2), Office commentary, p. 37.

² ILC, 46th Session, Geneva, 1962, Report V(2), p. 31 (Office commentary on observations by the Government of the United States).

³ ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, paras. 36-37, pp. 757-758.

⁴ This is the Committee's reply to a request by the Government of Cyprus regarding the applicability of Article 8 in the case of a State which guarantees equality of treatment without any condition of reciprocity.

⁵ The Government of New Zealand has indicated non-ratification of the 1935 Convention as one of the obstacles to the ratification of Convention No. 118.

⁶ This Convention, which came into force on 10 August 1938, has been ratified by Hungary (10.8.37), Israel (16.1.63), Italy (22.10.52), the Netherlands (6.10.38), Spain (8.7.37) and Yugoslavia (4.1.46). Two other countries which had ratified the Convention, namely Czechoslovakia (12.6.50) and Poland (21.3.38), subsequently denounced it.

⁷ ILC, 46th Session, Geneva, 1962, RP, Appendix VIII, para. 41, p. 759.

The Social Security Agreement concluded among the Nordic countries on 15 September 1955 is in force for Denmark, Finland, Iceland, Norway and Sweden (for fuller details see ILC, 45th Session, Geneva, 1961, Report VIII(1), Ch. II, pp. 67-69).

Examples of bilateral agreements between the countries of Eastern Europe based on the principle of territoriality are those concluded between the USSR and Bulgaria (Vedomosti Verkhovnogo Soveta SSSR, No. 15, Text No. 106, 1960), Czechoslovakia (idem, No. 26, Text No. 236, 1960), the German Democratic Republic (idem, No. 42, Text No. 391, 1960), Romania (idem., No. 32, Text No. 333, 1961) and Hungary (idem., No. 25, Text No. 285, 1963). Article 2 of each of these agreements provides that the nationals of one of the contracting Parties normally residing in the territory of the other Party shall enjoy the same treatment as its own nationals in all matters pertaining to social security.

⁸ It was not thought necessary to include a definition of these terms in Article 1 of the Convention, since they are based on a long tradition going back to Article 4 of the Equality of Treatment (Accident Compensation) Convention, 1925 (ILC, 46th Session, Geneva, 1962, Report V(II), p. 43, Office commentary).

9 There can be no doubt that the freedom left to Members to determine, in particular by multilateral or bilateral instruments, the extent to which the Convention shall apply to benefits payable in respect of contingencies arising before its entry into force but falling due after that date implies, a fortiori, that insurance periods completed before the date of entry into force may be taken into account for the purposes of the application of the Convention in the same manner as is provided, in particular under Article 21, paragraph 2, of the Maintenance of Migrants' Pension Rights Convention, 1935, and under most multilateral Conventions or other instruments on social security. In any case, there is nothing to prevent Members from accepting, under multilateral or bilateral instruments concluded among themselves, obligations of a higher standard than those imposed on them by international Conventions (ILC, 46th Session, Geneva, 1962, Report V(1), Article 11, p. 28).

CONCLUSIONS

The spirit of Convention No. 118

133. Just as the wood sometimes cannot be seen for the trees, the detailed examination of the basic provisions of the Convention and national legislation and practices in the preceding chapters may cause two basic features of Convention No. 118 to be overlooked.

134. The first of these is its general objective: the promotion of equality of treatment between human beings, the only difference between them lying so far as this Convention is concerned in the fact that some are nationals and some are not. This general objective, which is profoundly human and social, has acquired great importance because of the mass migration of workers seeking a means of earning their daily bread and of acquiring a minimum of economic security for themselves and their children today and for their old age tomorrow; in addition, the economic crisis which still exists in the world has forced masses of migrants to return to their home countries without any assurance of paid work or coverage by the social welfare systems of the countries in which they have been working.

135. The second basic feature of Convention No. 118 is related to the specific field in which it is proposing equality of treatment, i.e. social security. Nowadays, this field is the keystone of any social protection system in a developed country and should be a fundamental objective of the social policy of a developing country. Without social security, there can be no economic protection against sickness, accidents, invalidity, unemployment, poverty or old age, nor against the needs of orphans. These social contingencies, which threaten every human being, are even more compelling when they affect persons living far from their national home or returning there at an advanced age.

136. The ratification and application of Convention No. 118 certainly will not be sufficient to cure all these ills, but it is the general purpose international instrument which is best suited to serving this purpose. It will therefore be necessary to keep in mind these simple human objectives and not allow the sometimes extremely complex technical problems raised by Convention No. 118 to cause us to lose sight of the social nature of its provisions or the urgency of the matters with which it deals. For today's migrants, it will be too late, or almost too late, to apply the provisions of this instrument once they are in their sixties.

Basic subjects dealt with in Convention No. 118

137. The Convention deals with three distinct, basic matters: firstly equality of treatment for nationals and non-nationals on the national territory; secondly, the payment of benefits to persons

resident abroad and finally the maintenance of migrants' rights and the distribution of the resulting burden.¹

138. Regarding the first of these subjects, the present study has shown that most of the legislations examined grant equality of treatment to nationals and non-nationals in the field of social security considered. Moreover, in the relatively few cases in which this equality is not granted, the surviving discrimination generally relates to particular aspects of certain branches of social security; this discrimination appears to be attributable in some cases more to historical factors or unintentional omissions than to a deliberate desire on the part of the countries concerned to exclude non-nationals from the social protection enjoyed by their nationals.

139. The Committee found no national legislation relating to social security, of which it could be said that it is based on the principle of different treatment for nationals and non-nationals. This finding is worth pointing out not only because it shows the degree to which this basic subject of Convention No. 118 has been taken up in national legislations, but also because it gives grounds for hoping, with a certain amount of optimism, that the remaining differences in treatment can be eliminated within a not too distant future. In view of this, ratification of Convention No. 118 may constitute an appreciable contribution to the elimination of remaining differences of treatment, or prevent them from being created unintentionally in the future.

140. In this connection, it must be emphasised that the principle of equality of treatment as established by Convention No. 118 requires that non-nationals be treated like nationals, if necessary with improvement in the treatment which they receive; application of the principle of equality of treatment should in no case result in reduced social protection for nationals themselves.

141. As regards the second basic subject of Convention No. 118, the examination of national legislation and practices showed that although the payment of benefits to persons residing abroad is difficult to achieve, many States have already taken the necessary action. Moreover, in general those which do not yet provide for the payment of benefits to beneficiaries residing abroad do not appear to be opposed to the principle itself that this should be done. This finding also is worth stressing, because the difficulties which may be associated with attainment of this aim of the Convention are not unsurmountable; this is proved by the fact that many member States already guarantee payment of certain benefits in the event of the beneficiary residing abroad. In this connection also, ratification of Convention No. 118 may help to speed up the establishment and application of the measures needed to solve the problems involved in exporting certain benefits to persons residing abroad.

142. Regarding the third basic subject of the Convention, the Committee found that many States have concluded bilateral or multilateral agreements on social security, designed to ensure the maintenance of migrants' rights.² However, much apparently remains to be done. The aim of Convention No. 118 in this field is to ensure the establishment of a wide range of agreements between the member States concerned, guaranteeing migrants the maintenance of their acquired rights or rights in course of acquisition, whenever they change residence. This aim may appear ambitious, but it is socially justified by the vital importance to a migrant of retaining his social security rights. One merely has to think of the destitution of a worker close to retirement age who loses all his social security rights because he leaves or has to leave the country in which he has spent the greater

part of his active life, or a worker suffering from an occupational disease who loses all his entitlements to medical care because he left or had to leave the country in which he contracted the disease.

143. This aim of Convention No. 118, which is very wide in scope, is fully justified by the situations against the consequences of which it is designed to provide protection. However, the need is to continue to develop an extensive network of bilateral or multilateral agreements, which might call for delicate negotiations and complex technical solutions. The Convention merely requests member States for which it is in force to "endeavour to participate" in schemes for the maintenance of acquired rights and rights in course of acquisition (paragraph 1 of Article 7), without the impossibility of concluding an agreement for this purpose being interpreted as failure to respect the relevant provisions of the Convention. Moreover, these provisions were worded both generally and flexibly so as to serve as guidance for long-term action without imposing detailed obligations which might handicap a search for the solutions best adapted to the features of the legislations of the member States concerned. If necessary, member States may request the International Labour Office to provide the technical assistance required for the drafting and application of bilateral or multilateral agreements to implement the provisions of the Convention.

Ratification prospects

144. As Convention No. 118 is founded on the principle of reciprocity (under which a State is bound only as regards the nationals of those States for whom the Convention is also in force), it is very important, to permit the attainment of its social objectives, that it be ratified by the largest possible number of States and that the obligations which it entails be accepted for the largest possible number of branches of social security.

145. The examination of national legislations showed that over 50 member States possess legislation which, as it stands at present, would enable them to ratify Convention No. 118 by accepting the obligations established regarding one or more branches of social security.³ In addition, examination of the national legislations of countries which have already ratified the Convention shows that they could accept the obligations in respect of other branches without having to modify their legislation.⁴ The Convention could also be declared applicable to various non-metropolitan territories under their present legislation.⁵

146. Thus, the ratification prospects appear to be very good. The social objectives of Convention No. 118 would be more fully attained if countries whose legislation enables them to do so ratified it. In this connection, the Committee wishes to emphasise the priority which it would be appropriate to give to acceptance of the obligations of branch (g) concerning employment injury benefits, which constitutes a minimum core of social protection for non-nationals and migrants.

Difficulties encountered

147. The foregoing chapters contain indications, for each country, of the main divergencies of national legislations from the

provisions of the Convention, and possible ways of eliminating the divergencies. In these conclusions, an attempt will be made to give an over-all view of the main difficulties of a general nature which were pointed out in the reports submitted for this survey, as regards both possible ratification and the acceptance of other branches.

148. Some States indicated that there were no difficulties preventing or delaying ratification; this was the case for Liberia, Mexico, Morocco and Portugal. It should be added in this connection that the possibility of ratifying Convention No. 118 by Bolivia, Chile, Colombia, Peru and Venezuela was examined in 1976 in the course of direct contacts between the competent national services and representatives of the Director-General of the ILO, at the request of countries of the Andean Group. Bolivia has already submitted its instrument of ratification and there are good prospects that the other countries mentioned will do so in the relatively near future. In addition, Ecuador, which has already ratified the Convention, is at present considering the acceptance of another branch.

149. Some countries have referred to the additional financial burden resulting from the application of certain provisions of the Convention, especially those relating to payment of benefits when beneficiaries are residing abroad.⁶ This difficulty appears to be all the more well grounded from the point of view of the States since the worldwide economic crisis has not yet receded. However, it must be borne in mind that although the payment of certain social security benefits on their own territory or abroad may perhaps imply an increase in the financial burden supported by the States, non-payment of these benefits may result in hardship for the insured persons, who might find themselves deprived of their only resources. Although the problem may be a very real one from a purely economic and financial standpoint, it requires further examination if considered from the viewpoint of the insured persons and the basic principles of social justice.

150. Some States consider it preferable to solve the social protection problems associated with migrants by means of limited bilateral or multilateral agreements.⁷ This solution offers certain advantages for States possessing well-developed social security systems, which can therefore decide in each case to extend their obligations to nationals of other countries. However, accession to a worldwide instrument such as Convention No. 118 would make it possible on the one hand to guarantee a certain social protection for nationals of countries with which social security agreements have not as yet been concluded and on the other hand to promote the conclusion of bilateral or multilateral agreements as part of a worldwide international action. In this way, special agreements, more detailed and adapted to the individual requirements of the signatory countries, would effectively complement the more general and flexible provisions of Convention No. 118.

151. Reference is often made to the obstacle constituted by the obligation on Members to pay to their own nationals and those of other member States to whom they have an obligation to do so under the principle of reciprocity, in the event of residence abroad, such benefits as invalidity, old-age, survivors' and death benefits, as well as employment injury pensions.⁸ It is not surprising that this obligation still constitutes an obstacle, because it is one of the most stringent provisions of Convention No. 118. The social progress which this obligation implies could not be achieved without effort.

152. Another general difficulty which has been mentioned is the insufficiency of the development of social security in some countries.⁹ It is appropriate to recall in this connection that Convention No. 118

can be ratified by accepting only one of its branches and that it is possible to accept later on other branches as the national social security system gradually develops. From this point of view, the flexibility of the Convention as regards ratification means that it is particularly well adapted to the special conditions prevailing in developing countries.

153. In order to solve these general difficulties, like the special difficulties mentioned in the foregoing chapters, it appears useful to consult the workers' and employers' organisations, as was done by one government¹⁰ and has been proposed by certain occupational organisations.¹¹ In its technical and general policy aspects, social security affects the daily lives of all workers so it is appropriate to consult them, especially in the case of Convention No. 118 which is the most important instrument on social security for non-nationals and migrants.

The current relevance of Convention No. 118

154. Since the entry into force of the Convention and taking into account the ratifications which have already occurred (32) and the acceptances of the obligations of its various branches (151), an extensive social security network has been built up for foreign and migrant workers, which protects them, as appropriate, not only when they are on the territory of the country in which they are working, but also, and this is very important, when they leave this territory. However, comparison of these figures with the potential total number of ratifications (133 ILO member States) and acceptances of branches (1,197, omitting non-metropolitan territories), shows how much this instrument can still contribute to the building of a worldwide system for the protection of non-nationals and migrant workers as regards social security.

155. In addition, Convention No. 118 is amongst the ILO instruments which, even though they are sufficiently flexible to permit ratification by developing countries, nevertheless contain provisions whose requirements have not yet been satisfied by many highly-industrialised countries.

156. It is to be hoped, in the interests of millions of non-national and migrant workers, that member States will continue to make every effort to extend application of the principle of equality of treatment as regards social security in accordance with the provisions of Convention No. 118.

Footnotes to Conclusions

¹ ILC, Geneva, 1962, RP, p. 435 (statement by Mr. Netter on behalf of the Committee on Social Security, at the 30th Sitting of the 46th Session of the International Labour Conference).

² This applies, for example, to the following countries: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, El Salvador, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Luxembourg, Madagascar, Mali, Malta, Morocco, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Senegal, Spain, Sweden,

Switzerland, Tunisia, Ukrainian SSR, USSR, United Kingdom, Upper Volta, Uruguay (see ILO: Liste des instruments internationaux de sécurité sociale adoptés depuis 1946, Geneva, 1974; exists only in French).

³ This applies, for example, to the following countries: Algeria: branches (a), (b) and (c); Argentina: branches (a), (b), (c), (d), (e), (f) and (g); Australia: branches (a), (b), (g) and (h); Austria: branch (g); Belgium: branches (a), (c), (g) and (h); Bulgaria: branches (b), (c) and (g); Byelorussian SSR: branches (b), (c) and (i); United Republic of Cameroon: branches (c) and (i); Canada: branches (a), (b), (c), (d), (f) and (h); Cuba: branches (a), (b) and (c); Cyprus: branches (b), (c), (d), (e), (f) and (g); Czechoslovakia: branches (b), (c) and (i); El Salvador: branches (a), (b), (c), (d), (e), (f) and (g); Ethiopia: branches (b) and (c); Gabon: branches (a), (c) and (i); German Democratic Republic: branches (b), (c), (g) and (h); Guyana: branches (b) and (c); Haiti: branches (d), (e) and (f); Hungary: branches (b) and (c); Iceland: branches (a), (b), (c), (d), (f) and (g); Iran: branches (a), (b), (c) and (i); Iraq: branches (a), (b) and (c); Japan: branches (g) and (h); Kuwait: branch (g); Liberia: branch (g); Luxembourg: branches (h) and (i); Malawi: branch (g); Malaysia: branches (a), (d) and (g); Mali: branches (a) and (c); Malta: branches (b), (e), (f) and (h); Mauritius: branches (b) and (g); Mexico: branches (a), (b), (c), (d), (e), (f) and (g) (the Government stated in its report that it intends to ratify Convention No. 118 in the near future); Morocco: branches (b), (c), (d), (e) and (f); New Zealand: branches (b), (h) and (i); Niger: branches (c) and (i); Nigeria: branch (g); Paraguay: branches (a), (b), (c) and (i); Peru: branches (a) and (c); Philippines: branch (g); Romania: branches (a), (b) and (c); Rwanda: branches (d), (e), (f) and (g); Senegal: branches (c) and (g); Sierra Leone: branch (g); Singapore: branches (b), (c) and (g); Somalia: branches (b) and (c); Sri Lanka: branches (c), (d), (e), (f) and (g); Switzerland: branch (g); Tanzania: branches (c) and (g); Thailand: branches (b), (c) and (g); Ukrainian SSR: branches (b), (c) and (i); USSR: branches (b), (c) and (i); United Kingdom: branches (a), (b), (c), (f) and (h); United States: branches (d), (e) and (f); Upper Volta: branches (c), (d), (e), (f) and (g); Uruguay: branches (a), (b), (c), (h) and (i); Yemen: branches (b), (c) and (g).

* This is the case, for example, for the following countries (the list of branches accepted is given in annex I): Bangladesh: branch (b); Brazil: branch (h); Denmark: branch (c); Finland: branch (f); Ireland: branches (c), (d) and (g); Madagascar: branches (e), (f) and (i); Pakistan: branch (d); Syrian Arab Republic: branches (b) and (c).

⁵ This applies, for example, to the following British non-metropolitan territories: Antigua: branches (b) and (c); Belize: branches (b), (c) and (g); Bermuda: branches (a) and (f); British Solomon Islands: branch (c); British Virgin Islands: branch (g); Brunei: branches (c) and (g); Dominica: branches (b) and (c); Falkland Islands (Malvinas): branches (e) and (g); Gibraltar: branches (a) and (c); Gilbert Islands: branch (g); Guernsey: branches (a), (b), (c), (e), (f), (g) and (h); Hong Kong: branches (b), (c) and (g); Isle of Man: branches (a), (b), (c), (f) and (h); Jersey: branches (a), (b), (c), (e), (f) and (g); Montserrat: branch (g); St. Kitts-Nevis-Anguilla: branches (d), (e), (f) and (g); St. Helena: branch (g); Seychelles (independent since 29 June 1976): branch (g).

⁶ For example, the Central African Empire, Cyprus, Federal Republic of Germany (pensions), Rwanda, Sri Lanka, the British non-

metropolitan territories of British Solomon Islands, Gibraltar (family allowances), Montserrat.

⁷ For example, Canada, the British non-metropolitan territory of Jersey, United Kingdom.

⁸ For example, Barbados (invalidity), Belgium, Czechoslovakia, German Democratic Republic, British non-metropolitan territory of Gibraltar, Norway, New Zealand, Senegal, Sweden.

⁹ For example, Trinidad and Tobago, Uganda.

¹⁰ Egypt.

¹¹ The Australian Council of Trade Unions and the Central Council for Industry of Australia.

A P P E N D I C E S

EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962 (No. 118):CHART OF RATIFICATIONS AND UNDERTAKINGS UP TO 30 MARCH 1977

(DATE OF ENTRY INTO FORCE: 25.4.64)

STATES	DATE OF RATIFICA- TION	NUMBER OF BRANCHES ACCEPTED	BRANCHES TO WHICH UNDERTAKINGS RELATE: X								
			(a) MEDICAL CARE	(b) SICKNESS BENEFIT	(c) MATERN- ITY BENEFIT	(d) INVALID- ITY BENEFIT	(e) OLD-AGE BENEFIT	(f) SURVIVORS' BENEFIT	(g) EMPLOY- MENT INJURY BENEFIT	(h) UNEMPLOY- MENT BENEFIT	(i) FAMILY BENEFIT
Bangladesh	22. 6.72	2			X				X		
Barbados	14.10.74	5		X	X		X	X	X		
Bolivia	31. 1.77	4	X	X	X						X
Brazil	24. 3.69	7	X	X	X	X	X	X	X		
Central African Emp.	8.10.64	4			X		X		X		X
China ¹	4. 1.65	6	X		X	X	X	X	X		
Denmark	17. 6.69	4	X	X					X	X	
Ecuador	9. 3.70	6	X	X	X	X		X	X		
Finland	15. 8.69	3	X	X					X		
France	13. 5.74	7	X	X	X	X		X	X		X
Fed. Rep. of Germany	19. 3.71	5	X	X	X				X	X	
Guatemala	4.11.63	1			X						
Guinea	11. 8.67	7	X	X	X		X	X	X		X
India	19. 8.64	3	X	X	X						
Ireland	26.11.64	4	X	X						X	X
Israel	9. 6.65	5			X		X	X	X		X
Italy	5. 5.67	9	X	X	X	X	X	X	X	X	X
Jordan	7. 3.63	4			X	X		X	X		
Kenya	9. 2.71	3				X	X	X			

Libyan Arab Rep.	19. 6.75	9	X	X	X	X	X	X	X	X	X
Madagascar	22. 6.64	4		X	X	X			X		
Mauritania	15. 7.68	5				X	X	X	X		X
Netherlands	3. 7.64	9	X	X	X	X	X	X	X	X	X
Norway	28. 8.63	2						X			X
Pakistan	27. 3.69	2			X				X		
Suriname	15. 6.76	1							X		
Sweden	25. 4.63	5	X	X	X				X	X	
Syrian Arab Rep.	18.11.63	4				X	X	X	X		
Tunisia	20. 9.65 21. 4.76	8	X	X	X	X	X	X	X		X
Turkey	25. 6.74	7	X	X	X	X	X	X	X		
Viet-Nam ²	7.12.70	3			X				X		X
Zaire	11.11.67	3				X	X		X		

TERRITORY	DATE OF DECLARA- TION
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Netherlands Antilles (appl. with- out modif.)	3. 7.64	1	X
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¹ Ratification communicated in the name of China by the authority which represented it at the ILO at that date, prior to the decision by the Governing Body to recognise the Government of the People's Republic of China as the representative government of China.

² Ratification registered in respect of the territory of the former Republic of South Viet-Nam.

APPENDIX II

REPORTS CONSIDERED¹

States	Ratification of Convention No. 118 ²	Reports received pursuant to article 19	Reports received pursuant to article 22
Afghanistan	-	-	-
Algeria	-	X	-
Argentina	-	X	-
Australia	-	X*	-
Austria	-	X	-
Bangladesh	X	X*	-
Barbados	X	X	-
Belgium	-	X	-
Benin	-	-	-
Bolivia	X	X	-
Brazil	X	X	X
Bulgaria	-	X	-
Burma	-	X	-
Burundi	-	-	-
Byelorussian SSR	-	X	-
United Republic of Cameroon	-	X	-
Canada	-	X	-
Central African Empire	X	X	X
Chad	-	-	-
Chile	-	-	-
China	X ³	-	-
Colombia	-	-	-
Congo	-	X*	-
Costa Rica	-	X	-
Cuba	-	X	-
Cyprus	-	X	-
Czechoslovakia	-	X	-
Democratic Yemen	-	-	-
Denmark	X	X	X
Dominican Republic	-	-	-
Ecuador	X	-	X
Egypt	-	X	-
El Salvador	-	X	-
Ethiopia	-	X*	-
Fiji	-	-	-
Finland	X	X	X
France	X	X	-
Gabon	-	X*	-
German Democratic Republic	-	X	-
Federal Republic of Germany	X	X	X
Ghana	-	-	-
Greece	-	X	-
Guatemala	X	-	X
Guinea	X	X	X
Guyana	-	X	-
Haiti	-	X*	-
Honduras	-	-	-
Hungary	-	X	-
Iceland	-	X*	-

States	Ratification of Convention No. 118 ²	Reports received pursuant to article 19	Reports received pursuant to article 22
India	X	X	X
Indonesia	-	X*	-
Iran	-	X*	-
Iraq	-	X	-
Ireland	X	X*	X
Israel	X	X*	X
Italy	X	-	X
Ivory Coast	-	-	-
Jamaica	-	X*	-
Japan	-	X	-
Jordan	X	X*	X
Kenya	X	X*	X
Kuwait	-	X	-
Lao Republic	-	-	-
Lebanon	-	-	-
Liberia	-	X	-
Libyan Arab Republic	X	-	X
Luxembourg	-	X	-
Madagascar	X	X	X
Malawi	-	X	-
Malaysia	-	X	-
Mali	-	X	-
Malta	-	X	-
Mauritania	X	-	X
Mauritius	-	X	-
Mexico	-	X	-
Mongolia	-	-	-
Morocco	-	X	-
Nepal	-	-	-
Netherlands	X	-	X
New Zealand	-	X	-
Nicaragua	-	-	-
Niger	-	X*	-
Nigeria	-	X	-
Norway	X	X	X
Pakistan	X	X	X
Panama	-	X	-
Paraguay	-	X*	-
Peru	-	X	-
Philippines	-	X	-
Poland	-	X	-
Portugal	-	X	-
Qatar	-	X*	-
Romania	-	X	-
Rwanda	-	X	-
Senegal	-	X	-
Sierra Leone	-	X	-
Singapore	-	X	-
Somalia	-	X	-
Spain	-	X	-
Sri Lanka	-	X	-
Sudan	-	-	-
Suriname	X	X*	X
Sweden	X	X	X
Switzerland	-	X	-
Syrian Arab Republic	X	X*	X
Tanzania	-	X*	-

States	Ratification of Convention No. 118 ²	Reports received pursuant to article 19	Reports received pursuant to article 22
Thailand	-	X*	-
Togo	-	-	-
Trinidad and Tobago	-	X	-
Tunisia	X	X	X
Turkey	X	-	-
Uganda	-	X	-
Ukrainian SSR	-	X	-
USSR	-	X	-
United Arab Emirates	-	-	-
United Kingdom	-	X	-
United States	-	X	-
Upper Volta	-	X	-
Uruguay	-	X	-
Venezuela	-	-	-
Viet-Nam ⁴	X	-	-
Yemen	-	X*	-
Yugoslavia	-	X*	-
Zaire	X	-	X
Zambia	-	X	-
Total	32	94	26

¹ Reports received too late for inclusion in the Summary of Reports on Unratified Conventions (Report III, Part 2) are indicated by *.

² See Appendix I for the branches accepted by each country.

³ Ratification communicated in 1965 in the name of China by the authority which represented it at the ILO at that date, prior to the decision by the Governing Body to recognise the Government of the People's Republic of China as the representative Government of China.

⁴ Ratification registered in respect of the territory of the former Republic of South Viet-Nam.

X = Reports received.

- = Reports not received.

Note: A total of 18 reports has also been received in respect of the following non-metropolitan territories: Australia (Norfolk Island); United Kingdom (Antigua, Belize, Bermuda, British Solomon Islands, British Virgin Islands, Brunei, Dominica, Falkland Islands (Malvinas), Gibraltar, Gilbert Islands, Guernsey, Hong-Kong, Isle of Man, Jersey, Montserrat, St. Kitts-Nevis-Anguilla, St. Helena). In addition the Government of the United Kingdom has communicated a report concerning Seychelles for the period ending 1 July 1976.

APPENDIX III

INDEX OF STATES AND NON-METROPOLITAN TERRITORIES MENTIONED

I. STATES

Algeria

- Chapter I, note 23
- Chapter II, notes 13, 25, 27
- Chapter III, notes 9, 32
- Conclusions, notes 2, 3

Argentina

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, notes 9, 12, 34
- Conclusions, notes 2, 3

Australia

- Chapter I, note 23
- Chapter II, notes 13, 26, 27
- Chapter III, notes 10, 32
- Conclusions, notes 2, 3, 11

Austria

- Chapter I, note 23
- Chapter II, notes 14, 25
- Chapter III, notes 10, 33
- Conclusions, notes 2, 3

Bangladesh

- Chapter I, note 22
- Conclusions, note 4

Barbados

- Chapter I, note 22
- Chapter II, notes 15, 29
- Chapter III, note 18
- Conclusions, note 8

Belgium

- Chapter I, note 23
- Chapter II, notes 12, 25, 27
- Chapter III, notes 7, 10, 27, 33
- Conclusions, notes 2, 3, 8

Bolivia

- Chapter I, note 22
- Chapter III, note 31
- Conclusions, para. 148

Brazil

- Chapter I, notes 22, 45, 48, 50, 51
- Chapter II, notes 15, 29
- Chapter III, notes 2, 3, 21, 24, 34
- Conclusions, notes 2, 4

Bulgaria

Chapter I, note 23
Chapter II, notes 13, 27
Chapter III, notes 9, 10, 31
Chapter V, note 7
Conclusions, notes 2, 3

Burma

Chapter I, note 24
Chapter II, notes 12, 25
Chapter III, note 13

Byelorussian SSR

Chapter I, note 23
Chapter II, note 12
Conclusions, notes 2, 3

Cameroon, United Republic of

Chapter I, note 24
Chapter II, notes 12, 25, 27
Chapter III, notes 16, 32
Conclusions, note 3

Canada

Chapter I, note 23
Chapter II, notes 13, 25, 26
Chapter III, notes 1, 10, 32
Conclusions, notes 2, 3, 7

Central African Empire

Chapter I, notes 22, 45, 50
Chapter II, notes 15, 29, 33
Chapter III, notes 18, 21, 39
Conclusions, note 6

Chile

Conclusions, para. 148

Colombia

Conclusions, para. 148; note 2

Costa Rica

Chapter I, note 23
Chapter II, notes 14, 25
Chapter III, notes 9, 31
Conclusions, note 2

Cuba

Chapter I, note 23
Chapter II, notes 12, 25
Chapter III, note 12
Conclusions, note 3

Cyprus

Chapter I, note 24
Chapter II, notes 12, 25
Chapter III, note 9
Chapter IV, note 1
Chapter V, note 4
Conclusions, notes 2, 3, 6

Czechoslovakia

- Chapter I, note 23
- Chapter II, notes 13, 25
- Chapter III, notes 11, 33
- Chapter V, notes 6, 7
- Conclusions, notes 2, 3, 8

Denmark

- Chapter I, notes 22, 45, 50, 51
- Chapter II, notes 16, 30, 33
- Chapter III, notes 2, 33
- Chapter V, note 7
- Conclusions, notes 2, 4

Dominican Republic

- Conclusions, note 2

Ecuador

- Chapter I, notes 46, 47, 50
- Chapter II, note 18
- Chapter III, note 2
- Conclusions, para. 148

Egypt

- Chapter I, note 23
- Chapter II, notes 14, 25
- Chapter III, note 9
- Conclusions, note 10

El Salvador

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, note 9
- Conclusions, notes 2, 3

Ethiopia

- Chapter I, note 24
- Chapter II, note 14
- Conclusions, note 3

Finland

- Chapter I, notes 22, 31
- Chapter II, note 16
- Chapter III, note 32
- Chapter V, note 7
- Conclusions, notes 2, 4

France

- Chapter I, notes 22, 32
- Chapter II, notes 15, 29, 30
- Chapter III, note 18
- Conclusions, note 2

Gabon

- Chapter I, note 23
- Chapter III, note 32
- Conclusions, note 3

German Democratic Republic

- Chapter I, note 23
- Chapter II, note 13
- Chapter III, note 32
- Chapter V, note 7
- Conclusions, notes 2, 3, 8

Federal Republic of Germany

- Chapter I, notes 22, 45
- Chapter II, notes 15, 29
- Chapter III, notes 2, 18
- Conclusions, notes 2, 6

Ghana

- Chapter I, note 40

Greece

- Chapter I, note 23
- Chapter II, notes 14, 25, 27
- Chapter III, notes 9, 34
- Conclusions, note 2

Guatemala

- Conclusions, note 2

Guinea

- Chapter I, notes 22, 45, 46, 50
- Chapter II, notes 6, 33
- Chapter III, notes 21, 39

Guyana

- Chapter I, note 24
- Chapter II, notes 12, 25
- Chapter III, note 14
- Conclusions, note 3

Haiti

- Chapter I, note 24
- Chapter II, notes 12, 25
- Chapter III, notes 9, 10
- Conclusions, note 3

Honduras

- Conclusions, note 2

Hungary

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, notes 11, 33
- Chapter V, notes 6, 7
- Conclusions, notes 2, 3

Iceland

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, note 9
- Chapter V, note 7
- Conclusions, notes 2, 3

India

- Chapter I, note 22
- Chapter II, notes 15, 29
- Chapter III, note 17

Indonesia

- Chapter I, note 25
- Chapter II, notes 12, 25
- Chapter III, note 15

Iran

- Chapter I, note 23
- Chapter III, notes 9, 31
- Conclusions, note 3

Iraq

- Chapter I, note 23
- Chapter II, note 12
- Conclusions, note 3

Ireland

- Chapter I, notes 22, 45, 50
- Chapter III, note 39
- Conclusions, notes 2, 4

Israel

- Chapter I, notes 45, 50
- Chapter III, notes 2, 3, 39
- Chapter V, note 6

Italy

- Chapter I, para. 18; notes 3, 45, 50, 51
- Chapter II, note 18
- Chapter III, notes 2, 22, 39
- Chapter V, note 6

Jamaica

- Chapter I, note 24

Japan

- Chapter I, note 23
- Chapter II, notes 14, 25
- Chapter III, notes 10, 32
- Conclusions, note 3

Jordan

- Chapter I, notes 34, 39

Kuwait

- Chapter I, note 25
- Chapter II, note 12
- Conclusions, note 3

Liberia

- Chapter I, note 25
- Chapter II, note 14
- Conclusions, para. 148; note 3

Luxembourg

Chapter I, note 23
Chapter II, notes 14, 27
Chapter III, notes 10, 12, 33
Conclusions, notes 2, 3

Madagascar

Chapter I, notes 22, 34, 45, 50
Chapter II, notes 15, 29, 33
Chapter III, notes, 17, 31
Conclusions, notes 2, 4

Malawi

Chapter I, note 25
Chapter II, notes 12, 25
Chapter III, note 9
Conclusions, note 3

Malaysia

Chapter I, note 25
Chapter II, note 12
Conclusions, note 3

Mali

Chapter I, note 23
Chapter II, note 12
Chapter III, note 33
Conclusions, notes 2, 3

Malta

Chapter I, note 24
Chapter II, note 13
Chapter III, note 33
Conclusions, notes 2, 3

Mauritania

Chapter I, note 45
Chapter III, notes 21, 39

Mauritius

Chapter I, note 24
Chapter II, notes 12, 26, 27
Chapter III, notes 9, 32
Conclusions, note 3

Mexico

Chapter I, note 23
Chapter II, notes 12, 25
Chapter III, notes 9, 16
Conclusions, para. 148; note 3

Morocco

Chapter I, note 24
Chapter II, notes 12, 25, 28
Chapter III, notes 9, 33
Conclusions, para. 148; notes 2, 3

Netherlands

Chapter I, notes 45, 49, 50, 51
Chapter II, note 2
Chapter III, note 2
Chapter V, note 6

New Zealand

- Chapter I, note 23
- Chapter II, notes 10, 12, 22
- Chapter III, notes 5, 10, 15, 27
- Chapter V, note 5
- Conclusions, notes 2, 3, 8

Nicaragua

- Conclusions, note 2

Niger

- Chapter I, note 24
- Chapter II, notes 12, 25, 28
- Chapter III, notes 16, 31
- Conclusions, notes 2, 3

Nigeria

- Chapter I, note 24
- Chapter II, note 13
- Conclusions, note 3

Norway

- Chapter I, notes 22, 44, 45, 50, 51
- Chapter II, notes 2, 16
- Chapter III, notes 2, 22, 39
- Chapter V, note 7
- Conclusions, notes 2, 8

Pakistan

- Chapter I, note 22
- Chapter II, note 15

Panama

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, notes 9, 34
- Conclusions, note 2

Paraguay

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, notes 10, 32
- Conclusions, notes 2, 3

Peru

- Chapter I, note 23
- Chapter II, notes 13, 25
- Chapter III, notes 14, 31
- Conclusions, para. 148; notes 2, 3

Philippines

- Chapter I, note 24
- Chapter II, note 14
- Conclusions, note 3

Poland

- Chapter I, note 23
- Chapter II, note 14
- Chapter III, note 32
- Chapter V, note 6
- Conclusions, note 2

Portugal

Chapter I, note 23
Chapter II, notes 14, 25
Chapter III, notes 16, 33
Conclusions, para. 148; note 2

Romania

Chapter I, note 23
Chapter II, notes 12, 25
Chapter III, notes 11, 34
Chapter V, note 7
Conclusions, notes 2, 3

Rwanda

Chapter I, note 24
Chapter II, notes 12, 25
Chapter III, note 18
Conclusions, notes 3, 6

Senegal

Chapter I, note 24
Chapter II, notes 13, 25, 28
Chapter III, notes 17, 32
Conclusions, notes 2, 3, 8

Sierra Leone

Chapter I, note 25
Chapter II, notes 12, 25
Chapter III, note 9
Conclusions, note 3

Singapore

Chapter I, note 24
Chapter II, notes 13, 25
Conclusions, note 3

Somalia

Chapter I, note 24
Chapter II, notes 12, 25
Chapter III, note 14
Conclusions, note 3

Spain

Chapter I, note 23
Chapter II, notes 14, 27
Chapter III, note 33
Chapter V, note 6
Conclusions, note 2

Sri Lanka

Chapter I, note 24
Conclusions, notes 3, 6

Surinam

Chapter I, notes 22, 45
Chapter II, note 33

Sweden

- Chapter I, notes 22, 45
- Chapter II, notes 16, 30
- Chapter III, notes 18, 32
- Chapter V, note 7
- Conclusions, notes 2, 8

Switzerland

- Chapter I, note 23
- Chapter II, notes 14, 27
- Chapter III, notes 10, 31
- Conclusions, notes 2, 3

Syrian Arab Republic

- Chapter I, notes 22, 45, 50
- Chapter III, notes 2, 23
- Conclusions, note 4

Tanzania

- Chapter I, note 24
- Chapter II, note 25
- Chapter III, note 9
- Conclusions, note 3

Thailand

- Chapter I, note 25
- Chapter II, notes 12, 25
- Chapter III, note 9
- Conclusions, note 3

Trinidad and Tobago

- Chapter I, note 24
- Chapter II, note 12
- Conclusions, note 9

Tunisia

- Chapter I, notes 22, 45, 50, 51
- Chapter II, note 15
- Chapter III, note 2
- Conclusions, note 2

Uganda

- Chapter I, note 24
- Chapter II, notes 13, 25
- Conclusions, note 9

Ukrainian SSR

- Chapter I, note 23
- Chapter II, note 12
- Conclusions, notes 2, 3

USSR

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, note 31
- Chapter V, note 7
- Conclusions, notes 2, 3

United Kingdom

- Chapter I, note 23
- Chapter II, notes 12, 25
- Chapter III, notes 10, 33
- Conclusions, notes 2, 3, 7

United States

- Chapter I, note 23
- Chapter II, notes 12, 25, 27
- Chapter III, note 9
- Conclusions, note 3

Upper Volta

- Chapter I, note 24
- Chapter II, notes 12, 25
- Chapter III, note 32
- Conclusions, notes 2, 3

Uruguay

- Chapter I, note 23
- Chapter II, notes 12, 27
- Chapter III, note 15
- Conclusions, notes 2, 3

Venezuela

- Conclusions, para. 148

Yemen

- Chapter I, note 24
- Chapter II, notes 12, 25
- Conclusions, note 3

Yugoslavia

- Chapter V, note 6

Zaire

- Chapter III, note 23

Zambia

- Chapter I, note 24
- Chapter II, note 13

II. OTHER STATE

Seychelles¹

- Chapter I, note 26
- Chapter II, note 17
- Conclusions, note 5

¹Report communicated, before the independence of Seychelles, by the United Kingdom Government.

III. NON-METROPOLITAN TERRITORIES

Australia

Norfolk Island

Chapter I, note 29

Chapter II, note 17

United Kingdom

Antigua

Chapter I, note 26

Chapter II, notes 17, 31

Chapter III, note 19

Conclusions, note 5

Belize

Conclusions, note 5

Bermuda

Chapter I, note 26

Chapter II, notes 17, 32

Chapter III, note 20

Conclusions, note 5

British Virgin Islands

Chapter I, note 27

Chapter II, notes 17, 31

Chapter III, note 19

Conclusions, note 5

Brunei

Chapter I, note 27

Chapter II, notes 17, 31

Chapter III, note 19

Conclusions, note 5

Dominica

Chapter I, note 26

Chapter II, notes 17, 31

Conclusions, note 5

Falkland Islands (Malvinas)

Chapter I, note 27

Chapter II, notes 17, 31

Chapter III, notes 20, 35

Conclusions, note 5

Gibraltar

Chapter I, note 28

Chapter II, notes 17, 31

Chapter III, notes 20, 35

Conclusions, notes 5, 6, 8

Gilbert Islands

Conclusions, note 5

Guernsey

Chapter I, note 28
Chapter II, note 17
Chapter III, note 35
Conclusions, note 5

Hong Kong

Chapter I, note 27
Chapter II, notes 17, 31
Chapter III, note 19
Conclusions, note 5

Jersey

Chapter I, note 28
Chapter II, note 17
Chapter III, note 37
Conclusions, notes 5, 7

Isle of Man

Chapter I, note 28
Chapter II, note 17
Chapter III, note 36
Conclusions, note 5

Montserrat

Chapter I, note 26
Chapter II, notes 17, 31
Chapter III, note 19
Conclusions, notes 5, 6

St. Kitts-Nevis-Anguilla

Conclusions, note 5

St. Helena

Chapter I, note 27
Chapter II, notes 17, 31
Chapter III, note 19
Conclusions, note 5

Seychelles

(see under "Other State")

Solomon Islands

Chapter I, note 26
Chapter II, notes 17, 31
Chapter III, note 19
Conclusions, notes 5, 6