



## THIRD ITEM ON THE AGENDA

**Follow-up to consultations regarding  
social security instruments****Contents**

|                                                                               | <i>Page</i> |
|-------------------------------------------------------------------------------|-------------|
| Introduction.....                                                             | 1           |
| 1.    The object of consultations.....                                        | 1           |
| 2.    Evolution of international law of social security.....                  | 2           |
| 3.    Results of the general discussion on social security.....               | 4           |
| 4.    Document structure .....                                                | 5           |
| I.    Comprehensive standards .....                                           | 6           |
| 1.    Minimum standards on social security .....                              | 6           |
| A.    Introduction.....                                                       | 6           |
| B.    The flexibility clauses .....                                           | 6           |
| C.    Summary of the consultations.....                                       | 8           |
| D.    Remarks.....                                                            | 11          |
| 2.    The instruments of coordination.....                                    | 12          |
| Introduction .....                                                            | 12          |
| 2.1.  Equality of Treatment (Social Security) Convention, 1962 (No. 118)..... | 14          |
| 2.1.1.  Summary of the provisions of the Convention .....                     | 14          |
| 2.1.2.  Previous examination by the Working Party .....                       | 15          |
| 2.1.3.  Outcome of the consultation .....                                     | 15          |
| 2.1.4.  Remarks .....                                                         | 19          |
| 2.2.  Maintenance of Social Security Rights Convention, 1982 (No. 157).....   | 20          |
| 2.2.1.  Summary of the provisions of the Convention .....                     | 20          |
| 2.2.2.  Prior examination by the Working Party .....                          | 21          |
| 2.2.3.  Outcome of the consultations.....                                     | 21          |
| 2.2.4.  Remarks .....                                                         | 27          |

|      |                                                     |    |
|------|-----------------------------------------------------|----|
| II.  | Medical care and sickness benefit.....              | 28 |
|      | Introduction.....                                   | 28 |
| 1.   | Content of standards .....                          | 29 |
| 2.   | Previous examination by the Working Party .....     | 32 |
| 3.   | Outcome of the consultations .....                  | 33 |
| 4.   | Remarks .....                                       | 38 |
| III. | Invalidity, old age and survivors' benefits.....    | 39 |
|      | Introduction.....                                   | 39 |
| 1.   | Content of standards .....                          | 40 |
| 2.   | Previous examination by the Working Party .....     | 45 |
| 3.   | Outcome of the consultations .....                  | 45 |
| 4.   | Remarks .....                                       | 52 |
| IV.  | Employment injury benefit .....                     | 53 |
|      | Introduction.....                                   | 53 |
| 1.   | Content of standards .....                          | 54 |
| 2.   | Previous examination by the Working Party .....     | 56 |
| 3.   | Outcome of the consultations .....                  | 57 |
| 4.   | Remarks .....                                       | 62 |
| V.   | Unemployment benefit .....                          | 63 |
|      | Introduction.....                                   | 63 |
| 1.   | Content of standards .....                          | 64 |
| 2.   | Previous examination by the Working Party .....     | 66 |
| 3.   | Outcome of the consultations .....                  | 67 |
| 4.   | Remarks .....                                       | 71 |
| VI.  | Remarks concerning Convention No. 102.....          | 72 |
| VII. | Proposals concerning the instruments examined ..... | 75 |

## Introduction

### 1. The object of consultations

1. The present document is submitted to the Working Party at its 13th meeting, during the 282nd Session (November 2001) of the Governing Body. It presents the results of written consultations with the constituents, undertaken in 2000-01 with regard to seven Conventions and three Recommendations in the area of social security.<sup>1</sup>
2. The consultations were undertaken as a result of decisions by the Governing Body based on the Recommendations of the Working Party. Concerning three Conventions,<sup>2</sup> the Governing Body requested member States to communicate to the Office information on the obstacles and difficulties encountered that might prevent or delay ratification of these Conventions. For three other Conventions,<sup>3</sup> the request for information related not only to the obstacles to ratification but also to the possible need for revision of these Conventions. The Governing Body also wished to receive from the States parties to an older Convention<sup>4</sup> information on the ratification prospects of the Convention which revised it. Finally, the request for information concerning three Recommendations<sup>5</sup> related to the obstacles to the implementation of these instruments.
3. The Office addressed a communication to the member States in May 2000 summarizing the decisions of the Governing Body with respect to the abovementioned instruments and asking them to forward their observations on this subject. At its November 2000 session, the Governing Body decided to defer the examination of these instruments to its current session.<sup>6</sup> Following a request by the Working Party, the Office renewed in January 2001 its call to member States which had not responded to its first communication and invited their response by 31 March 2001.
4. The governments were also invited to organize tripartite consultations in order to reply to this consultation and to communicate to the Office any observations that the organizations

<sup>1</sup> This document does not deal with instruments on social security for seafarers: the latter were examined by the Joint Maritime Commission at its meeting in January 2001. See GB.280/5.

<sup>2</sup> Social Security (Minimum Standards) Convention, 1952 (No. 102), Equality of Treatment (Social Security) Convention, 1962 (No. 118), and Employment Injury Benefits Convention, 1964 (No. 121). The request concerning Convention No. 102 also concerned the reasons for the limited recourse to the flexibility clauses that it contained.

<sup>3</sup> Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Medical Care and Sickness Benefits Convention, 1969 (No. 130), and Maintenance of Social Security Rights Convention, 1982 (No. 157).

<sup>4</sup> Unemployment Provision Convention, 1934 (No. 44). The States parties to this Convention were invited to contemplate ratifying the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

<sup>5</sup> Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131), Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), and Maintenance of Social Security Rights Recommendation, 1983 (No. 167).

<sup>6</sup> Document GB.279/11/2.

of employers and workers might wish to make. With few exceptions, the replies received indicated that tripartite consultations had taken place and, in most cases, the opinions of the organizations of employers and workers which had been consulted were included with the information provided to the Office.<sup>7</sup>

5. As of 10 October 2001, the Office had received replies from 81 member States.<sup>8</sup> These replies are analysed in the present document, following the structure presented below (paragraphs 19-21). It should be stressed that, in some cases, it seemed possible that the obstacles mentioned by the member States in their reply could be overcome by additional clarifications regarding the scope of the relevant provisions in the instruments or through targeted technical assistance provided by the Office. Taking into account the scope of the present document, it was not possible to address all these issues in this context. The Office offers to provide States that so desire, all complementary information and the necessary technical assistance in this area.
6. Due to the complexity and importance of the subject under examination, it appears useful, first, briefly to retrace the main stages in the development of international law of social security and to recall the results of the general discussion on social security which took place at the 89th Session (June 2001) of the Conference.

## 2. Evolution of international law of social security

7. The ILO has always attached great importance to questions of social security in accordance with the mandate contained in its Constitution.<sup>9</sup> The Conference adopted the first international labour Conventions in this area at its First Session in 1919, while the most recent instruments, which relate to maternity protection, were adopted in June 2000. The whole set of ILO Conventions and Recommendations on social security is traditionally divided into three “generations” of standards which correspond to different approaches.
8. Standards of the *first generation* were based mainly on the notion of social insurance and are applicable only to given categories of workers, not to the whole population. Each

<sup>7</sup> The views of the social partners are reported separately only when they differ from those of the government. Furthermore when the comments made by the government for a given instrument appear under different headings, the observations of the workers’ and employers’ organizations are reproduced only once.

<sup>8</sup> *Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, Slovenia, South Africa, Spain, Suriname, Sweden, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States and Uruguay.* In addition, *Croatia, Seychelles* and *Swaziland* indicated that consultations with the social partners on these issues had still to take place. Finally, in the *Dominican Republic*, social partners are participating in the drafting of social security legislation. They will communicate the information requested to the Office when this law is adopted.

<sup>9</sup> The Preamble of the ILO Constitution stipulates that the ILO’s mandate is to promote conditions of labour in particular by “the prevention of unemployment, ... the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury”.

instrument covered a specific risk; in addition, separate instruments were adopted for certain risks in different economic sectors (in particular, industry and agriculture).

9. At the end of the Second World War, standards of the *second generation* were inspired from a wider notion of social security developed in the Beveridge report and recognized in the Declaration of Philadelphia of 1944. The latter included in the programme of activities of the ILO the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care. Instruments which rely on this notion of social security include a general recommendation adopted the same year as the Declaration of Philadelphia<sup>10</sup> as well as the Social Security (Minimum Standards) Convention, 1952 (No. 102), which establishes a minimum level of protection in each of the nine branches of social security taken together.<sup>11</sup> Convention No. 102 places these branches under common organizational principles and principles of governance, which were also incorporated in the more recent instruments.<sup>12</sup> The organizational principles include risk-pooling and collective financing. They also imply guaranteeing a minimum level of protection sufficient to maintain the family of the beneficiary in health and decency. Moreover, according to the principles of governance, social security schemes must be supervised by public authorities or administered jointly by employers and workers. Representatives of the persons protected must participate in the management of such schemes if the administration is not entrusted to a public institution. Finally, the State must accept general responsibility for the due provision of benefits and proper administration of the institutions and services concerned. As will be seen below, Convention No. 102 also contains a large number of flexibility clauses concerning, in particular, the personal coverage and the rate of benefits that it provides, in order to take account of the different situation of ILO member States.
10. In 1952 the Conference discussion should have included an examination of a second draft instrument, which would set up advanced standards in this area. However, the latter could not be examined due to a lack of time and the complexity of the subject. Finally, the transition to instruments of the *third generation* took place at a later stage by a revision of the social security Conventions of the first generation. The most recent Conventions and Recommendations examined below cover respectively short-term benefits (medical care and sickness benefit for Convention No. 130); long-term benefits (invalidity, old-age and survivors' benefits for Convention No. 128); employment injury (Convention No. 121); and unemployment benefits, in close relation to provisions on employment policy (Convention No. 168). These instruments follow the model of Convention No. 102 while offering a higher level of protection. They are examined in more detail below in the abovementioned order.
11. One should stress from the outset that ILO social security standards have had an important impact beyond the ILO context. The European Social Charter provides that the Contracting Parties undertake to maintain a social security system at a satisfactory level at least equal to that required for ratification of Convention No. 102. In addition, the European Code of Social Security, adopted under the auspices of the Council of Europe with the participation

<sup>10</sup> Income Security Recommendation, 1944 (No. 67).

<sup>11</sup> The nine branches of social security are the following: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

<sup>12</sup> Report of the Committee of Experts for the Application of Conventions and Recommendations, ILC, 89th Session ( June 2001), para. 155.

of the ILO, contains the substance of the provisions of Convention No. 102, except Part XII on equality of treatment.

### **3. Results of the general discussion on social security**

- 12.** The objective of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference was to establish an ILO vision on social security that, while continuing to be rooted in the basic principles of the ILO, responded to the new issues and challenges facing this subject area.<sup>13</sup> The general discussion covered six broad issues: social security and economic development; extension of social security coverage; income security for the unemployed and employment; equality between men and women; financing of social security and ageing; and social dialogue and ILO activities.<sup>14</sup>
- 13.** The discussion led the Conference to adopt a resolution and conclusions<sup>15</sup> to which the Governing Body and the Office were invited to give due consideration in the context of future activities of the Organization. The conclusions stated, as the Universal Declaration of Human Rights had done earlier on, that social security was a basic human right and a fundamental means for creating social cohesion, thereby helping to ensure social peace and social inclusion. Moreover, if properly managed, it enhanced productivity by providing health care, income security and social services. In that respect, if there was no single right model of social security administration, good governance of the schemes was essential for their success. In a general manner, the social partners had a strong role to play in the management of social security.
- 14.** The extension of social security coverage to those who were not yet protected was of highest priority. The major challenge in that respect was the existence of the informal economy. Social security systems should become more comprehensive with regard to categories of people and range of provisions in accordance with national circumstances. Each country should determine a national strategy for working towards social security for all. This should be closely linked to its employment strategy and to its other social policies. In that respect, in order to be effective, initiatives to establish or extend social security required social dialogue.
- 15.** Moreover, for persons of working age, the best way to provide a secure income was through decent work. The provision of cash benefits to the unemployed should therefore be closely coordinated with training and retraining and other assistance they may require in order to find employment.
- 16.** The conclusions also emphasized that social security should promote and be based on the principle of gender equality. This also implied measures to ensure equitable outcomes for women providing unpaid care to family members.
- 17.** The ageing of the population in many countries was a phenomenon which had a significant effect on both advance-funded and pay-as-you-go pension systems and on the cost of health care. Responses to this challenge had to be sought above all through higher levels of

<sup>13</sup> *Social security: Issues, challenges and prospects*, ILC, 89th Session (June 2001), Geneva, Report VI, p. 1.

<sup>14</sup> *Record of Proceedings*, ILC, 89th Session (June 2001), Geneva, No. 16.

<sup>15</sup> *ibid.* pp. 32-37.

sustainable economic growth leading to additional numbers in productive employment. The setting up of systems of individual savings accounts should not weaken solidarity systems which spread risks throughout the whole of the scheme membership. Moreover the HIV/AIDS pandemic had a catastrophic effect on social security financing and called for additional technical assistance by the ILO to the developing countries concerned.

18. Finally, the conclusions stressed again that ILO activities in social security should be anchored in the Declaration of Philadelphia, the decent work concept and relevant ILO social security standards.

#### 4. Document structure

19. The first part of this document deals with the comprehensive standards, namely, Convention No. 102 and the instruments of coordination.<sup>16</sup> Each of the sections that follow relate to one particular branch of social security. For each branch, the document is structured in the following way: introduction enumerating the three generations of instruments in the area under examination; content of standards in the form of comparative tables between Convention No. 102 and the more recent standards; reminder of the previous examination of the different instruments by the Working Party; summary account of the consultation; remarks.
20. The summary account of the consultations deals successively with the relevant section of Convention No. 102, the corresponding third-generation Convention, and, if applicable, the Recommendation which complements it. In order to provide an overview of the situation regarding all social security branches covered by Convention No. 102, the remarks of the Office on the result of the consultations concerning this instrument are presented in a separate section at the end of this document. Finally, the last part of this document contains proposals for each instrument which has been the object of a request for information.
21. It should be underlined that many answers were very detailed and that the Office is pleased to dispose of such valuable information on the situation of member States in the area of social security. The Office endeavoured to convey as precisely as possible the views expressed by the constituents in the context of the consultation.<sup>17</sup> However, it has not been possible to reproduce here all the details of comments made. In addition, the observations formulated with respect to Recommendations were often identical to those regarding the corresponding Conventions. With a view to simplification, such comments were thus reproduced only if they differed substantially from those concerning the Conventions.

<sup>16</sup> These are instruments relating to equality of treatment between nationals and non-nationals and the maintenance of acquired rights or in course of acquisition. They are examined in the framework of comprehensive standards, since the questions that they address concern all branches of social security.

<sup>17</sup> Thus, certain States which had already ratified the one or the other of the Conventions under examination communicated very interesting information on the application of these instruments. These observations are not reported here unless they mention difficulties of application or a possible need for revision of the instruments in question.

## I. Comprehensive standards

### 1. Minimum standards on social security

#### A. Introduction

22. As was shown above, Convention No. 102 constitutes a minimum standard for the nine branches of social security which the instrument covers and places under common principles.<sup>18</sup> In its Parts II to X, the Convention covers, in sequence, medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The other parts of the Convention contain common provisions applicable to each of the branches, with regard to, in particular, the calculation of periodical payments, equality of treatment, and the financing and administration of social security systems.
23. Each branch of social security, with the exception of family benefit, has been the subject of third-generation instruments. The following pages compare, branch by branch, the provisions of Convention No. 102 with those of more recent Conventions and Recommendations.<sup>19</sup> A summary of the consultations which were held at the request of the Governing Body is also presented, regarding each branch of social security, for the corresponding parts of Convention No. 102 and the third-generation standards.
24. The Governing Body has requested specific information with regard to Convention No. 102. It has invited member States to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of the Convention, *and of the reasons for the limited recourse to the flexibility clauses* included in this Convention. A brief outline of these flexibility clauses is therefore appropriate at this point.

#### B. The flexibility clauses

25. To begin with, a State which ratifies Convention No. 102 can accept the application of only certain parts of the instrument (Article 2). Apart from the common provisions, a State has to accept at least three parts of the Convention which correspond to a specific branch of social security. These branches shall include at least one of the following five: unemployment benefit; old-age benefit; employment injury benefit; invalidity benefit; and survivors' benefit. Each State party to the Convention may subsequently notify the Office that it accepts the obligations of the Convention in respect of one or more other parts of the instrument (Article 4).
26. As the Committee of Experts on the Application of Conventions and Recommendations has underlined,<sup>20</sup> ILO social security Conventions offer perhaps the largest set of options and flexibility clauses allowing for the goal of universal coverage to be attained gradually and in step with economic development. Each country is offered the possibility of

<sup>18</sup> See above, para. 9.

<sup>19</sup> Since Convention No. 183 and Recommendation No. 191 on maternity protection, 2000, were adopted very recently, the Governing Body did not request information on these instruments. This document therefore does not cover maternity benefits.

<sup>20</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 89th Session (June 2001), Geneva, para. 156.

combining contributory and non-contributory benefits, different methods of computing benefits, general and occupational schemes, compulsory and voluntary insurance, public and private tiers into the mix of protective measures best suited to its needs.

27. A detailed description of the whole set of the flexibility clauses goes beyond the scope of the present document. We will limit ourselves to examining those which concern personal coverage and the methods of calculating the minimum rate of cash benefits. These clauses are contained both in Convention No. 102 and in Conventions adopted subsequently, and the examination that follows is therefore valid for all of these instruments.<sup>21</sup>

(a) Personal coverage

*Seafarers* – including *sea fishermen* – as well as public servants in cases where they are protected by special schemes providing benefits which are at least equivalent to those required by the conventions – can be excluded from the application of Conventions No. 121, 128 and 130 (Articles 3, 39 and 4 of the Conventions). Convention No. 168 only allows the exclusion of public employees whose employment is guaranteed by national legislation up to normal retiring age (Article 11). Convention No. 102 does not apply to either seamen or sea fishermen (Article 77), since specific instruments regarding social security for these categories of workers were adopted in 1946.

*Persons whose employment is of a casual nature, members of the employer's family* living in his house in respect of their work for him, and other categories of employees not exceeding 10 per cent of all employees may be excluded from the application of Conventions Nos. 121, 128 and 130 (Articles 4, 37 and 5 respectively). Convention No. 121 also includes the possibility of excluding out-workers.

Conventions Nos. 128 and 130 also allow States whose legislation protects employees temporarily to exclude the application of these Conventions to *employees in the sector comprising agricultural occupations*, who are not yet protected by legislation at the time of ratification (Articles 38 and 3 respectively).

Finally, *States whose economy and medical facilities are insufficiently developed* and who have made a declaration to this effect at the time of ratification may cover a reduced number of persons, for example a percentage of all employees in industrial undertakings (Articles 3 and 9 of Convention No. 102; Article 5 of Convention No. 121; Article 9 of Convention No. 128; Articles 11 and 20 of Convention No. 130; and Article 11 of Convention No. 168).

(b) Method of calculating the rate of cash benefits

28. It is important to first of all underline the fact that the minimum rate of benefits is defined for any given State in relation to the wages in that country. The provisions of the Conventions therefore take account of differences in economic development in member States.

29. Moreover, the Conventions provide States a choice of three formulas to determine whether the benefits provided by national legislation reach the levels set out in the instruments.<sup>22</sup> These formulas take account of the calculation methods which are used most often in practice. The *first method* consists in fixing the minimum rate of benefit at a certain percentage of the previous earnings of the beneficiary or his breadwinner, with the possibility of prescribing a maximum limit for the rate of the benefit or for the earnings taken into account. This percentage should in any case be reached if the previous earnings of the beneficiary or his breadwinner are equal to or lower than the wage of a skilled manual male employee. According to the *second method* the amount of benefit has to be at least equal to a given percentage of the wage of an ordinary adult male labourer. Finally,

<sup>21</sup> In the following examination of different social security Conventions, the possibilities offered by flexibility clauses for the determination of the personal coverage should be kept in mind.

<sup>22</sup> Particular rules nonetheless apply for the calculation of the minimum rate of family benefit.

the *third method* consists in fixing the rate of benefit according to a prescribed scale which can depend on the level of other means of the family of the beneficiary. In this case, the amount should not be less than the one derived from the previous method.<sup>23</sup> As a result, no matter which method is chosen, the amount of the benefits must reach a certain percentage<sup>24</sup> of the established reference wage for a “standard beneficiary”.<sup>25</sup> The standard beneficiary is defined in a specific manner for each contingency and serves solely as a reference for comparison between the amount of benefits provided for by national legislation and the provisions of the conventions.

30. The States are allowed to choose their own rules and methods for calculating the rate of benefits, provided that the result meets the requirements as to amount of benefit laid down by the instruments.<sup>26</sup> The three proposed formulas and the parameters they apply (standard beneficiary, reference wage) are only established to allow for a *comparison* between the national situation and the requirements of the Convention, *on the basis of statistical data* furnished by the States parties to the Convention.

### C. **Summary of the consultations**

31. Seventy-nine States<sup>27</sup> responded to the request for information of the Governing Body regarding Convention No. 102. Among them, 24 States<sup>28</sup> are parties to the Convention.
32. As was already indicated, the responses of member States regarding one or another branch of social security covered by Convention No. 102 are analysed later in the document, in the context of the examination of the different branches. Only the general information which was received on this matter will be examined here.

<sup>23</sup> Each of the instruments examined contains detailed provisions on this matter. In Convention No. 102, these are Articles 65, 66 and 67 respectively.

<sup>24</sup> These percentages will be indicated later in the document, under the examination of different contingencies.

<sup>25</sup> The rate of benefits and the amount of the reference wage can be increased by the amount of family benefit received by the standard beneficiary, if the national legislation provides for such benefit.

<sup>26</sup> *Social security protection in old-age*, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 76th Session (June 1989), Geneva, para. 139.

<sup>27</sup> *Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belgium, Belarus, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Morocco, Mauritius, Mexico, Republic of Moldova, Norway, Netherlands, New Zealand, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, Slovenia, Sweden, Switzerland, Suriname, Syrian Arab Republic, South Africa, Spain, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States and Uruguay.*

<sup>28</sup> *Austria, Barbados, Belgium, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, France, Germany, Greece, Italy, Japan, Mexico, Norway, Netherlands, Peru, Portugal, Spain, Slovenia, Sweden, Switzerland, Turkey and the United Kingdom.*

## (a) Ratification prospects

33. The process for the ratification of Convention No. 102 had been initiated in **Congo**, and **Benin** indicated that it could consider ratifying the instrument, given that its social security system covered six of the nine branches set forth in the Convention. The ratification by **Romania** should also take place in the near future. Moreover, **Algeria, Belarus, Lithuania** and **Saint Vincent and the Grenadines** responded that they had not encountered any obstacles to ratification. Lithuania nonetheless underlined that, in general, the lack of translations of ILO conventions into national languages made the analysis of these instruments more difficult. Furthermore, Algeria specified that all parts of the Convention, with the exception of Part IV on unemployment benefit, could be accepted. Finally, the **Confederation of National Trade Unions** (Canada) emphasized the importance of international standards on social security. It considered that it was important to seriously examine the question of ratification of the Convention and to analyse the instrument in order to determine if it still responded to its objectives.
34. **Colombia, Estonia, Malaysia** and **South Africa**, responded that the question of the ratification of this Convention could not be examined before a number of reforms in the area of social security had been completed. **Bahrain** and **Oman** indicated that ILO standards on social security would be considered in the context of legislative reforms currently underway, taking into account their particular economic and social situations. Moreover, for **El Salvador, Mauritius** and **Panama**, the provisions of the Convention should foremost be thoroughly examined. Such a study should also be conducted in **Poland**, but the frequent changes in legislation made such a task difficult.<sup>29</sup>

## (b) Obstacles to ratification

*Economic or administrative difficulties*

35. For **Bangladesh, Indonesia** and **Uganda**, ratification of the Convention was not possible because of their respective economic situation, even though their legislation provided certain social security benefits. The **Syrian Arab Republic** and **Thailand** also enumerated economic obstacles to the ratification of Convention No. 102, whereas for **Latvia**, the difficulties were linked to its reduced administrative capacity. The **United Arab Emirates** responded that it had not ratified the Convention, in part due to the fact that its legislation was not in line with certain parts of the instrument, and for administrative reasons linked to the diversity of competent organs in this field. Finally, **San Marino** was not in a position to consider the ratification of the Convention due to a political crisis which had occurred in the country. Nonetheless, the provisions of this instrument were under examination by the competent administrative authorities.

*Non-conformity of national legislation*

36. **Azerbaijan, Cambodia** and **Kuwait** responded that their legislation was not in conformity with international social security instruments. Cambodia nonetheless clarified that a draft law under examination addressed four of the six contingencies which were covered by the Convention, namely old-age benefit, invalidity benefit, survivors' benefit and employment injury benefit. **Qatar** indicated that it did not have a social security system based on the

<sup>29</sup> The All-Poland Trade Unions Alliance (OPZZ) and the Independent Self-Governing Trade Union (NSZZ "Solidarnosc") considered that Poland should ratify Convention No. 102. The OPZZ underlined the possibility offered by the Convention of accepting only some of its parts, and the NSZZ recalled that Poland had already ratified the European Social Charter, which made reference to Convention No. 102.

payment of contributions. Furthermore, its social security legislation only covered its nationals.

37. *Lebanon* pointed to the existence of a certain number of obstacles to ratification, notably concerning the gathering of statistics. It was also not yet in the position of applying the provisions of at least three parts of the Convention. Nonetheless, a law on old-age benefit, invalidity benefit and survivors' benefit was in preparation. The Government had requested technical assistance from the Office with a view to resolving the difficulties encountered.
38. *India* cited obstacles concerning the number of persons protected by its legislation. This problem also existed in *Suriname*, due to the size of the informal economy in that country. In *China*, social security essentially covered workers in urban areas, while the majority of the population lived in rural areas.
39. In addition to noting obstacles which specifically concerned specific branches examined later in the document, *New Zealand* responded that the provisions of its legislation on qualifying period, waiting period, and the rate of cash benefits were not in conformity with the provisions of the Convention.

*Obstacles linked to the concepts  
on which the Convention is based*

40. *Australia, Canada, Finland, Hungary, United States* and the *General Union of Workers* (Portugal) considered that certain ILO Conventions on social security, notably Convention No. 102, made reference to outdated concepts such as the economic dependence of a woman in relation to her husband. These comments were also valid for the Conventions examined later.
41. Certain comments regarded the calculation of the rate of cash benefit. For several contingencies, the standard beneficiary is defined as a man who maintains a wife and two children. Certain States pointed out that this concept did not correspond to current realities (high number of divorces, unmarried partnerships, economic independence of women, the prohibition of all forms of discrimination against women). Furthermore, several responses indicated that it was contrary to the principle of equality to make reference in the method of calculation to the wage of a skilled manual male worker or to an ordinary adult male labourer. *Bulgaria* responded on its part that this concept was not reflected in its legislation. *Tunisia* also underlined that the notion of a standard beneficiary as defined in Convention No. 130 did not appear in its legislation. In the framework of consultations regarding Conventions Nos. 121, 128 and 130, *Peru* (which has ratified Convention No. 102) responded that the reference to the wage of a skilled manual male worker was against the principle of equality between men and women.
42. Other observations were made on the subject of survivors' benefit. Convention No. 102 provides that the contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner (Article 60), the widow being defined as a woman who was maintained by her husband at the time of his death. The obstacle raised is also linked to the notion of the dependence of the woman in relation to her husband, who is considered as the breadwinner.

*Miscellaneous*

43. For the *Russian Federation*, certain provisions of the Convention should be revised upwards, whereas others, such as provisions regarding equality of treatment, could not be applied for economic reasons. In general, the Government indicated that it was preferable

to ratify more recent Conventions to the extent that the national situation so permitted. *Finland*<sup>30</sup> also considered that it was not opportune to ratify Convention No. 102, due to the fact that it had already ratified more recent Conventions, and *Brazil* pointed out that Convention No. 102 was old and that its legislation has been modified several times since the Convention's adoption.

44. *Uruguay* indicated that its legislation was in conformity with several parts of Convention No. 102, but that its ratification was not appropriate since it would restrict the flexibility of its social protection programmes. *Pakistan* also considered that it respected the majority of the Convention's provisions, but that its ratification was not necessary.
45. Finally, *Singapore* cited the fact that, in general, its philosophy regarding social security was to achieve the self-reliance of every person. A social safety net did exist, but the Government did not guarantee the people's future needs.

#### D. Remarks

46. Given that member State replies regarding Convention No. 102 are analysed below, in the framework of the different contingencies covered by this Convention, the remarks concerning this instrument are grouped at the end of the document (paragraphs 322-340).
47. However, some of the comments formulated by the member States call for certain clarifications. Indeed, it seems that some explanations on the scope of Convention No. 102 and the social security Conventions in general, in particular regarding the method of calculation of the minimum amount of cash benefits, could contribute to resolving certain difficulties which were raised by the member States.
48. Concerning the methods for the calculation of the amount of cash benefits, the introduction of the concept of the "standard beneficiary" allows a comparison between the protection offered by national legislation and the provisions of the Convention. At the moment of the elaboration of this instrument, it was necessary to select a standard beneficiary and fix the minimum amount of benefits to which this beneficiary was entitled. The constituents used a family model which was very widespread at the time, and identified, in a certain number of cases, the standard beneficiary like a man maintaining a wife and two children. In no case did they limit the right to benefits to the beneficiaries corresponding to this family model. The Convention provides that, for the other beneficiaries, the benefits will be determined in a way that bears a reasonable relationship to the benefit for the standard beneficiary.<sup>31</sup> For example, this can be the case for a divorced mother who brings up her children alone and is employed.
49. In addition, the parameters like the salary of the skilled manual male employee and of the ordinary adult male labourer were set exclusively in order to be able to determine, on the basis of statistical data, whether the protection ensured by a State corresponds to the requirements of the Convention. When the rate of benefits was calculated on the basis of the salaries of male workers it was higher since, at that time, these wages were generally higher than the wages of women who exercised similar functions. Thus, the inequality which existed in the labour market was not reproduced in the context of social security. In

<sup>30</sup> The Central Organization of Finnish Trade Unions (SAK) and the Finnish Confederation of Salaried Employees (STTK) considered that there were no obstacles to the ratification of Convention No. 102.

<sup>31</sup> See for example, Article 65 para. 5, and Article 66, para. 3, of Convention No. 102.

fact, in order to verify that no gender discrimination exists as to the level of the resulting benefits, States party to Convention No. 102 are requested to supply information, for each contingency, on the amount of benefits for a woman employee whose previous earnings serving for the calculation of benefit were equal to the wage of the skilled manual male employee (report form for Convention No 102, article 65, Title V).

50. The fact that in many countries today law and practice does not make a distinction between, for example, the salary of an ordinary adult male or female labourer, does not constitute an obstacle to the application of the above provisions. These comments had already been formulated on this subject by some States on the occasion of the elaboration of the General Survey on the instruments relative to old-age benefits. The Committee of Experts had recalled that contrary to what certain governments appeared to believe, the States parties to the relevant Conventions could use, for the purposes of international comparison, one or the other of the formulas proposed for the calculation of benefits without, however, being obliged to introduced them in their national legislation or practice.<sup>32</sup>
51. These comments can also apply to the definition of the standard beneficiary for survivors' benefit. One should also stress that the Convention, which constitutes a minimum standard, provides that the contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner. Nothing precludes a State from granting additional benefits, for instance to widowers.
52. Consequently, the implementation of the provisions of Convention No. 102 and the instruments which succeeded it appears in fact to leave ample room for considerations of equality between men and women in society. The Conference underlined in this respect that "social security should promote and be based on the principle of gender equality".<sup>33</sup> A larger dissemination of information on the exact scope of social security Conventions and Recommendations would without doubt answer certain questions raised on this issue.

## 2. The instruments of coordination

### *Introduction*

53. In the past, when persons left their country in order to work in another, in the absence of an international agreement, they would cease to be protected by the social security system of their country of origin and risked to be confronted in the host country with restrictive conditions linked to nationality or residence. In order to remedy this situation, a certain number of countries concluded reciprocity agreements – bilateral and later multilateral – in the area of social security. Very early, the ILO became preoccupied with this question. This led to the adoption by the Conference of a certain number of instruments for the coordination of social security laws. Three fundamental principles underlie these coordination regimes: equality of treatment, maintenance of acquired rights (and its corollary, the provision of benefits abroad) and the maintenance of rights in course of acquisition.

<sup>32</sup> *Social security protection in old-age*, op. cit., para. 139.

<sup>33</sup> ILC, 89th Session (June 2001), *Provisional Record* No. 16, conclusions concerning social security, para. 8.

54. The principle of *equality of treatment* provides that migrant workers are subject to the social security legislation of the host country and receive benefits under the same conditions as national workers. By virtue of the *maintenance of acquired rights*, the migrant workers retain the rights acquired on the territory of a State even when their residence ends. Its corollary, the *provision of benefits abroad*, allows the beneficiary to receive these benefits on the territory of any other State bound by the convention of coordination.
55. Migrant workers are confronted with another type of problem due to the fact that the right to social security benefits is generally conditional upon the completion of a qualifying period. In the absence of any protective rule, migrant workers would in principle have to complete a qualifying period every time the country of residence changed. Therefore, these workers would receive, for instance, very low old-age benefits in comparison to those received if they had contributed to the social security system of one State throughout their career. The Conventions of coordination provide for the *maintenance of rights in course of acquisition* by adding-up the periods during which migrant workers were subject to social security legislations in different countries of residence.
56. From its First Session, the International Labour Conference inserted clauses on equality of treatment in the instruments it adopted. Thus, the Unemployment Convention, 1919 (No. 2), established such equality in favour of nationals of other States parties to the Convention (Article 3). The Maternity Protection Convention, 1919 (No. 3), extended the benefit of equal treatment to all female workers irrespective of nationality (Article 2). A few years later, the Conference adopted a Convention, namely – the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) – whose sole objective is to guarantee equality of treatment in the area of workmen’s compensation for accident between national workers and nationals of other States parties to the Convention. This Convention established a system of reciprocity whose efficiency to a large extent relies on the high number of ratifications received. Most Conventions on social security adopted by the Conference since then, contain a provision relative to equality of treatment.<sup>34</sup>
57. In addition, a certain number of instruments specifically regulate the situation of migrant workers like the Maintenance of Migrants’ Pension Rights Convention, 1935 (No. 48).<sup>35</sup> Later on, the Conference adopted much more developed instruments in the area of coordination: on the one hand, the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and on the other hand, the Maintenance of Social Security Rights Convention, 1982 (No. 157), which was complemented the following year with a Recommendation. These two Conventions were the object of a request for information made by the Governing Body and are therefore examined in more detail below.

<sup>34</sup> Part XI of Convention No. 102, Article 27 of Convention No. 121, Article 32 of Convention No. 130 and Article 6 of Convention No. 168. Among the recent instruments, Convention No. 128 is the only one that does not contain provisions on this subject.

<sup>35</sup> This Convention covers the old-age, invalidity and survivors’ benefits. In March 1996, the Governing Body decided to shelve Convention No. 48 with immediate effect. It also invited States parties to this Convention to contemplate ratifying Convention No. 157 and denouncing Convention No. 48 at the same time. See GB.265/8/2 and GB.265/LILS/WP/PRS/1.

## 2.1. *Equality of Treatment (Social Security) Convention, 1962 (No. 118)*

### 2.1.1. Summary of the provisions of the Convention<sup>36</sup>

- 58.** Just like Convention No. 102, Convention No. 118 covers the nine branches of social security. Nevertheless, in ratifying this Convention, States are free to choose the branch or branches to which its provisions will apply.
- 59.** In its Article 3, paragraph 1, the Convention grants the benefit of *equality of treatment* to nationals of other States parties to the Convention (global reciprocity). However, equality of treatment should also be provided to refugees and stateless people without any condition of reciprocity (Article 10). Equality of treatment should be accorded without any condition of residence except in the case of certain contributory schemes (Article 4). This provision means that equality of treatment should not be restricted by imposing conditions of residence only to non-nationals. The Convention also deals with the possibility of retaliation, by providing that a State can derogate from the principle of equality of treatment in a specified branch, with respect to the nationals of another State which does not grant equality of treatment with regard to social security even though it has legislation relative to that branch (Article 3, paragraph 3).
- 60.** The States which have ratified Convention No. 118 should also endeavour to participate in schemes for the *maintenance of the acquired rights and rights in course of acquisition* in favour of nationals of other States parties to the Convention, and for each branch accepted by these States (Article 7).
- 61.** This scheme should, in particular, provide for the totalization of periods of insurance, employment or residence and of assimilated periods for the acquisition, maintenance or recovery of rights and for the calculation of benefits.
- 62.** In this respect, a distinction should be made between the provisions which are directly applicable and those which can be implemented through the conclusion of bilateral or multilateral agreements between interested States. The latter type of obligation is necessary only with respect to interested States between which large movements of persons take place calling for the adoption of such arrangements. In addition, this is an obligation of best efforts and not an obligation to achieve a certain result; interested States are simply expected to negotiate in good faith. Finally, the provisions relative to the maintenance of acquired rights to other types of benefits are directly applicable.
- 63.** Article 5 of Convention No. 118 lays down the principle of the *provision of benefits abroad* with respect to invalidity, old-age and survivors' benefits as well as employment injury pensions and death grants. This obligation is limited to the nationals of the State concerned, and to those of other States which have accepted the obligations of the Convention for the same branch (reciprocity branch by branch).
- 64.** In general, States parties to the Convention may derogate from its provisions through specific agreements under the double condition that the rights and duties of other States parties are not affected and that the maintenance of rights is ensured in a way which, on the whole, is at least as favourable as the one provided in the Convention (Article 9).

---

<sup>36</sup> For more details, see *Equality of treatment (social security)*, Report of the Committee of Experts for the Application of Conventions and Recommendations, ILC, 63rd Session, Geneva, 1977, Report III(4B).

65. Finally, the Convention requires States parties to it to afford each other *administrative assistance* free of charge in order to facilitate the implementation of its provisions and of their respective legislation (Article 11).

#### 2.1.2. Previous examination by the Working Party

66. The document submitted by the Office to the Working Party with a view to the examination of Convention No. 118, underlined that the importance of this instrument had been reaffirmed by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, which took place in Geneva in 1997.<sup>37</sup>
67. During the examination of this Convention by the Working Party, it was noted that this instrument dealt with important questions. However, it was a relatively complex instrument. The Governing Body decided therefore to invite member States to contemplate ratifying Convention No. 118 and inform the Office of any obstacles or difficulties encountered that might prevent or delay ratification of this Convention.<sup>38</sup>
68. In addition, as a result of the examination of Convention No. 19 by the Working Party, the Governing Body invited the States parties to this Convention to contemplate ratifying Convention No. 118 accepting the obligations of this Convention in particular in respect of its branch (g) (employment injury benefit).<sup>39</sup> The denunciation of Convention No. 19 was not included in this invitation because the high ratification rate of this Convention gave rise to a network of mutual rights and obligations among a large number of member States.

#### 2.1.3 Outcome of the consultation

69. Sixty-one member States,<sup>40</sup> among which 17 States parties<sup>41</sup> to Convention No. 118, replied to the request for information on the ratification prospects of this Convention.

##### (a) Ratification prospects

70. In *Congo*, the question of the ratification of Convention No. 118 would be examined shortly with the organizations of employers and workers. The legislation of the *Czech Republic* was already in conformity with the Convention and this instrument would be included among those to be ratified by this State. In *Romania*, the entry into force of a new

<sup>37</sup> Document MEIM/1997/D.4, Appendix 1, para. 8.1.

<sup>38</sup> Documents GB.270/9/2 and GB.270/LILS/WP/PRS/2.

<sup>39</sup> *ibid.*

<sup>40</sup> *Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, France, Germany, Greece, Hungary, Indonesia, Japan, Jordan, Kenya, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Republic of Moldova, Morocco, Netherlands, New Zealand, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom and the United States.*

<sup>41</sup> *Barbados, Brazil, Central African Republic, Denmark, Ecuador, Egypt, France, Germany, Jordan, Kenya, Netherlands, Pakistan, Philippines, Sweden, Syrian Arab Republic, Tunisia and Turkey.*

law had recently ended discrimination against foreigners in the area of social benefits. A draft Bill targeted the same objective with regard to unemployment benefits. Romania should be in a position to ratify the Convention in the course of the coming years. In addition, *Lithuania* and *Saint Vincent and the Grenadines* replied that there were no obstacles to the ratification of this Convention while *Belarus* indicated that the provisions of this instrument were compatible with national legislation.

71. In *Colombia, Estonia, Greece, Malaysia, South Africa* and the *United Kingdom*, reforms to the social security system were under way or in preparation and the question of the ratification of this Convention would be examined after their completion. Malaysia specified that the ratification was not appropriate as long as social security coverage was not extended to a higher percentage of the population. *Peru* also noted that its social security system was under complete restructuring and this made ratification impossible for the time being. Such reforms were also under way in *Bahrain* and *Oman*. In this context, ILO standards would be taken into account, in the light of the situation prevailing in the country.
72. In addition, *El Salvador, Mauritius, Panama* and *Portugal* noted that in-depth studies should be conducted before this question could be examined. *Slovenia* specified that it was a party to bilateral agreements, which incorporated the principles of the Convention. The ratification of this instrument would necessitate the conclusion of a larger number of such agreements. In *Poland*, the pension system had been recently reformed and studies should be conducted on the possibility of ratifying the Convention. This task was nevertheless difficult because of frequent legislative amendments.<sup>42</sup>

(b) Obstacles to ratification

*Economic or administrative difficulties*

73. The *Russian Federation* underlined that it had concluded bilateral agreements with the countries of the ex-Soviet block and that these agreements were on the whole in conformity with the principles of the Convention. Nevertheless, in the light of the economic condition of the country, a widening of the categories of foreigners who benefited from social security benefits was not likely. *Uganda* also mentioned obstacles of an economic nature to the ratification of the Convention. However, old-age and survivors' benefits as well as medical care, were granted both to nationals and to foreigners who were residents or worked on the territory of this State. The economic situation in *Thailand* also constituted an obstacle to the ratification of the Convention.
74. *Latvia* referred to its insufficient administrative capacity and the complexity of the system of annual reports. The Government was actually examining the implementation of European directives in this area and took account of ILO and Council of Europe standards in the framework of reforms to the national social security system. The Government of *San Marino* could not express itself on the issue of the ratification of the Convention because of an internal political crisis. The administration examined nevertheless the provisions of this instrument.

<sup>42</sup> NSZZ "Solidarnosc" stated that it was in favour of the ratification of Convention No. 118.

*Non-conformity of national legislation*

*General*

75. *China* had not adopted any laws in the area covered by Convention No. 118, while the legislation of *Azerbaijan* and *Cambodia* was not in conformity with the provisions of this instrument. *Spain* replied that it had ratified the Migration for Employment Convention (Revised), 1949 (No. 97), and Convention No. 157, which offered similar protection to that provided by Convention No. 118. Some provisions of the latter were not consistent with national legislation. This question could be re-examined after the revision of the Toledo Pact.<sup>43</sup>

*Personal coverage*

76. Stateless persons and refugees were excluded from certain bilateral social security agreements concluded by *Bulgaria*. The obligation to offer protection in accordance with the provisions of the Convention to these categories of persons represented a problem also for *Canada*,<sup>44</sup> *Indonesia* and the *United Arab Emirates*.

*Equality of treatment*

77. *Hungary*, *Republic of Moldova* and *Qatar* noted that their legislation was not in conformity with Article 3 of the Convention which established the principle of equality of treatment between own nationals and nationals of other States parties to the Convention. Equality of treatment was also not ensured in *Kuwait* where the social security benefits were reserved to nationals. In *Singapore*, non-nationals were not under an obligation to contribute to the saving scheme for old age. *Japan* underlined that it would be preferable to ensure equality of treatment between nationals of countries with similar social security systems. In *Bulgaria*, a benefit in case of birth of a child was granted only to nationals.<sup>45</sup>
78. *Canada* was not favourable to the idea of according equality of treatment between nationals of other States and the Canadian tax-payers who contributed to the social security system. The unemployment benefits were accorded to beneficiaries who were entitled to a work permit on Canadian territory and had completed the required qualifying period. In addition, the residence period required for entitlement to old-age and survivors' benefits was above five years.
79. *Argentina*, *Australia*, *Lebanon*, *Morocco* and *New Zealand* noted that in accordance with their legislation, entitlement to benefits was subject to conditions of residence. Lebanon specified that the non-nationals enjoyed equality of treatment when they had a work permit and were nationals of a State which accorded this equality of treatment to the Lebanese. It also requested the technical assistance of the Office with a view to the conclusion of bilateral and multilateral social security agreements. *Switzerland* replied that one of the conditions set for the award of unemployment benefits was residence in the country.

<sup>43</sup> The Confederation of Workers' Unions stated that its was in favour of a ratification of the Convention.

<sup>44</sup> The National Confederation of Unions (CSN) considered that the possibility of ratifying this Convention should be considered seriously and analysed in order to make sure that it still responded adequately to its objectives.

<sup>45</sup> In addition, according to the Industrial Association, equality of treatment was accorded only to the nationals of States with which Bulgaria had concluded a bilateral agreement.

*Participation to a maintenance of rights scheme*

80. **Argentina** replied that its legislation did not provide for the maintenance of acquired rights or in course of acquisition. For **Canada**, the notion of acquired rights was problematic. In addition, the rule according to which the costs of invalidity, old-age and survivors' benefits should be either shared among the interested States or borne by the State on whose territory the beneficiaries resided, constituted an obstacle to the ratification of the Convention.
81. Concerning the maintenance of rights in course of acquisition, **Switzerland** indicated that it respected the principle of totalization except with regard to unemployment benefits, for the periods of work which were less than a year. In the **Republic of Moldova**, there was no system based on the principle of the totalization of periods of insurance, employment or residence and the implementation of such a system would give rise to additional financial costs to the country.

*Provision of benefits abroad*

82. The Articles of the Convention relative to the provision of benefits abroad represented an obstacle for **Algeria, Austria, Belgium, Benin, Canada** and **Cuba**. The legislation of these countries set conditions of residence for the provision of certain benefits. For Belgium this was the case for invalidity benefits, funeral grants and certain non-contributory benefits (grants to disabled persons and guaranteed income for old people). Canada specified that the benefits could not be provided abroad for reasons of control except in the framework of a reciprocal agreement concluded with the United States.

*Administrative assistance*

83. Article 11 of the Convention represented an obstacle to ratification for the **United States**, since this country did not ensure the provision of administrative assistance free of charge.

*Miscellaneous*

84. **Switzerland** considered that the mechanism of the Convention was complicated because certain provisions were directly applicable and others necessitated the conclusion of bilateral or multilateral agreements. The Swiss Government was in favour of concluding directly applicable Conventions.
85. From another viewpoint, two States replied that their legislation was in conformity with the provisions of the Convention but they did not plan to ratify. **Cyprus**<sup>46</sup> noted that its legislation did not discriminate between nationals and foreigners but its policy was to conclude mainly bilateral agreements in this area. The Government also considered the implementation of the regulation adopted by the European Union on this issue. **Costa Rica**<sup>47</sup> underlined the fact that its legislation respected and even went beyond the

<sup>46</sup> The Cyprus Workers' Confederation and the Pancyprian Federation of Labour expressed the wish that the possibility of ratifying Convention No. 118 be re-examined.

<sup>47</sup> The Central Union of Workers of Costa Rica considered, however, that the ratification of Convention No. 118 was of a great importance, taking into account the process of regional integration in Central America. This instrument would contribute to a uniform treatment of workers and could encourage the ratification and application of the Convention by the neighbouring countries. In addition, the situation of workers, in particular rural workers and workers in free economic zones would benefit.

provisions of Convention No. 118. It was added that the ratification of Conventions Nos. 102 and 130 had made it possible to address the population's needs in the area of social security.

#### 2.1.4. Remarks

- 86.** Among the **71** States which responded to the Office consultation with regard to Convention No. 118, **17** had already ratified this Convention, **three** clearly indicated that its ratification was forthcoming and three others answered that this ratification did not raise any difficulties. **Fifteen** States had not reached a final conclusion at this stage, as they should first carry out studies or reform their system of protection.
- 87. Thirty-three** States mentioned difficulties to the ratification of the Convention. Among them, **five** raised economic or administrative reasons and **two** member States did not plan to ratify the Convention although they considered that their legislation was in conformity with its provisions.
- 88. Twenty-six** States indicated that their legislation was not in conformity with the provisions of Convention No. 118. **One** State did not have legislation on the issues which were the object of this Convention and the legislation of **three** others generally diverged from the provisions of the Convention. However, in one of these States, a legislative reform was forthcoming and could eliminate the obstacles which were noted. The other States mentioned the existence of difficulties concerning one or more specific points analysed above (certain States met obstacles with regard to several of these points). For **four** States, the extension of the field of application of the Convention to refugees and stateless persons represented an obstacle to ratification. **Eight** States indicated that the provisions relative to the equality of treatment between nationals and non-nationals raised a problem of application. **Six** States mentioned the existence of conditions of residence for entitlement to benefits. For **one** State, the obstacles related, in general, to the participation to a system of maintenance of acquired rights or in course of acquisition. **One** State faced obstacles in the application of provisions on the maintenance of acquired rights while for **six** States these difficulties related specifically to the payment of benefits abroad. **Two** other States mentioned certain difficulties for the maintenance of rights in course of acquisition. For **one** State, the application of provisions relative to administrative assistance constituted an obstacle.
- 89.** The consultations revealed that considerable ratification prospects existed regarding Convention No. 118. In addition, the obstacles raised in the course of consultations did not appear to give rise to a general questioning of the validity of this Convention. Regarding its complexity, only **one** State underlined the difficulty of applying an instrument with certain directly applicable provisions and other provisions necessitating the conclusion of bilateral or multilateral social security agreements. In a certain number of cases, technical assistance from the Office could allow member States to overcome the difficulties they encountered. The decision to promote the ratification of this Convention, adopted in November 1997 by the Governing Body, could therefore be reiterated.
- 90.** The Working Party could invite member States to contemplate ratifying Convention No. 118.

## 2.2. Maintenance of Social Security Rights Convention, 1982 (No. 157)

### 2.2.1. Summary of the provisions of the Convention

- 91.** Convention No. 157 applies to each of the nine branches of social security for which a State party has legislation in force (Article 2), unlike Convention No. 118, which allows States parties to choose just one or more of the branches. Generally speaking, it reiterates and enlarges on principles set forth in Convention No. 118: the maintenance of acquired rights and rights in the course of acquisition, the provision of benefits abroad and administrative assistance. Unlike Convention No. 118, it contains no provisions requiring States parties to accord within their territory equal treatment to nationals and non-nationals. On the other hand it deals with subjects not addressed in Convention No. 118: determination of the applicable legislation and assistance to persons.
- 92.** It lays down rules for the *determination of the applicable legislation* in order to avoid conflicts of laws and the undesirable consequences that might ensue for those concerned either through lack of protection, or as a result of undue plurality of contributions of other liabilities or benefits (Article 5). Accordingly, States concerned must determine the applicable legislation by mutual agreement, in accordance with rules set by the Convention itself. They may, however, derogate from them in the interest of the persons concerned.
- 93.** Every State party must also endeavour to participate with every other State party concerned in schemes for the *maintenance of rights in course of acquisition* in respect of each branch of social security for which every one of them has legislation in force (Part III). Such schemes must provide for the adding together, to the extent necessary, periods of insurance, employment, occupational activity or residence with a view, inter alia, to the acquisition, maintenance or recovery of rights and, as the case may be, calculation of benefits. The schemes must also determine the formula of awarding benefits as well as the apportionment, where appropriate, of the costs involved. The Convention also requires States parties to endeavour to participate in schemes for the *maintenance of rights acquired* under their legislation as regards each branch of social security for which each of them has legislation in force (Part IV). Convention No. 118 distinguishes between provisions to be applied directly and those which may be implemented by means of agreements concluded between the States concerned. Convention No. 157 contains such a distinction as well.
- 94.** It also provides for the *provision of benefits abroad* (Article 9). For long-term contributory benefits, such provision is a direct obligation deriving from a right acquired under the legislation of one State party. The obligation covers beneficiaries who are nationals of a State party or refugees or stateless persons, irrespective of their place of residence.<sup>48</sup> In the case of non-contributory benefits, the conditions for the provision abroad are determined by mutual agreement between the States concerned. In the case of short-term benefits, the maintenance of the acquired rights principle does not necessarily involve provision abroad. The States concerned may instead award benefits corresponding to the benefits provided under the legislation of the State in whose territory the person concerned is resident or temporarily resident (Article 10, paragraph 2). States concerned must also endeavour to participate, for unemployment benefit, in schemes for the maintenance of rights acquired that guarantee such benefits to persons resident in the territory of one of these States other than the competent State (Article 10, paragraph 3).

<sup>48</sup> States participating in schemes for the maintenance of rights in the course of acquisition may, however, opt for an alternative method of meeting this obligation (Article 9, para. 2).

95. The Convention also contains provisions on *administrative assistance* and *assistance to persons* covered by the Convention (Part V). Like Convention No. 118, it provides for mutual assistance between States parties which will ordinarily be free of charge though certain expenses may be reimbursed (Article 12). States are also required to promote the development of social services to assist the persons concerned in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal, as well as in order to promote their personal and family welfare (Article 14).
96. Like Convention No. 118, Convention No. 157 allows States parties to derogate from its provisions subject to seven alternative guarantees (Article 17).
97. Lastly, it should be noted that Recommendation No. 167 has an appendix containing standard provisions for the conclusion of bilateral or multilateral social security instruments with a view to encouraging application of Conventions Nos. 118 and 157.

### 2.2.2. Prior examination by the Working Party

98. In March 1996<sup>49</sup> the Working Party examined Convention No. 157 and drew attention to its highly technical nature. The Governing Body decided to invite member States to consider the possibility of ratifying Convention No. 157 and to inform the Office of any obstacles and difficulties liable to prevent or delay ratification and of any need for revision of the Convention.
99. In March 2000 the Governing Body took a similar decision regarding the accompanying Recommendation, and invited member States to give effect to Recommendation No. 167, informing the Office of any obstacles and difficulties in its implementation.<sup>50</sup>

### 2.2.3. Outcome of the consultations

#### A. *Convention No. 157*

100. Seventy-seven member States,<sup>51</sup> including the three States parties to the Convention,<sup>52</sup> sent responses to the Office's inquiry concerning Convention No. 157.
- (a) Ratification prospects
101. *Egypt* was envisaging the possibility of ratifying the Convention and *Congo* would give consideration to the matter in the near future. The *Czech Republic* would address the

<sup>49</sup> Documents GB.265/8/2 and GB.265/LILS/WP/PRS/1.

<sup>50</sup> Documents GB.277/11/2 and GB.277/LILS/WP/PRS/4.

<sup>51</sup> *Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, South Africa, Spain, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom and the United States.*

<sup>52</sup> *Philippines, Spain and Sweden.*

matter in the next two years in the course of the implementation of European rules on these subjects.

- 102. *Benin*** emphasized the flexibility of Convention No. 157: some clauses were directly applicable while others were to be implemented by means of agreements concluded between the States concerned; it allowed for derogation subject to alternative guarantees. The Convention being flexible, ratification could be envisaged even though implementation was likely to be complex.
- 103. *Barbados, Central African Republic, Republic of Korea, Lithuania and Saint Vincent and the Grenadines*** indicated that there were no obstacles to ratification.
- 104. *Belarus* and *Hungary*** also indicated that their legislation was in line with the provisions of the Convention. In *Finland*, the legislation was consistent with the provisions of the Convention, but a number of issues still need clarification.<sup>53</sup>
- 105.** The Convention was examined regularly by the authorities in *Kenya* and *Turkey* would be examining the question of ratification at a later date. *El Salvador, Mauritius, Panama, Portugal* and *Suriname* replied that in-depth studies would be necessary before they could consider the question of ratification. *Poland* had recently reformed its pensions system and the feasibility of ratification required examination – a difficult task given the frequent amendments to the legislation.<sup>54</sup>
- 106. *South Africa, Colombia, Estonia, Greece, Italy, Malaysia*** and the *United Kingdom* were to consider ratification of the Convention upon completion of reforms under way or which were to take place shortly. Reforms were also in progress in *Bahrain* and *Oman*. ILO standards were taken into account in the context of reform and in the light of the country's social and economic position.
- 107. *Brazil*** replied that its legislation had undergone frequent amendments since Convention No. 157 was adopted. Ratification would require agreement of the relevant ministries. *Romania* had not addressed the prospects of ratifying Convention No. 157, but used the latter's principles as a basis for negotiating and revising bilateral agreements.

(b) Obstacles to ratification

*Economic and administrative difficulties*

- 108. *Bangladesh*** had not yet attained a level of economic development enabling it to ratify the Convention. The *Russian Federation* had concluded bilateral agreements with countries from the former Soviet bloc. The agreements reflected virtually all the basic aspects of the Convention. However, any extension of the categories of foreigners receiving social security benefits was unlikely in view of the country's economic situation. *Uganda, Syrian Arab Republic* and *Thailand* also indicated that ratification was not possible owing to economic reasons.
- 109. *France*** replied that its current priorities were to participate in the reform of community social security legislation and to negotiate new bilateral social security agreements. It was

<sup>53</sup> SAK, STTK and the Confederation of Unions for Academic Professions (AKAVA) are in favour of ratification. On the other hand the Confederation of Finnish Industry and Employers (TT) and Palvetutyönantajat are against.

<sup>54</sup> NSZZ "Solidarnosc" is in favour of ratifying Convention No. 157.

therefore not in a position to consider the invitation to ratify Convention No. 157. *Latvia* indicated that it was not able to ratify the Convention because it lacked the administrative capacity to do so. The obstacles encountered by the *United Arab Emirates* concerned not the absence of recognition of the rights established in the Convention but the number of bodies involved in enforcing the various regulations and the administrative requirements that ratification would imply. *San Marino* has been prevented from envisaging ratification by a political crisis. The competent departments were nonetheless examining its provisions.

#### *Non-conformity of national legislation*

##### *General*

- 110.** *Argentina* replied that the lack of legislation in this area was the source of obstacles to ratification of Convention No. 157. *Peru* said that it would be unable to ratify Convention No. 157 as long as it had not ratified Convention No. 118 since the two instruments were complementary. *Bulgaria* indicated that its legislation covered only nationals and that non-nationals were subject to compulsory sickness insurance as were stateless persons in positions of a long-term residence permit.
- 111.** *Azerbaijan, Cambodia, China* and *Kuwait* also cited inconsistency between legislation and the provisions of the Convention. *Qatar*, moreover, indicated that the absence of a social security system based on contributions was an obstacle to ratification. In *Singapore*, non-nationals were not required to contribute to the retirement-savings system.
- 112.** *Algeria* pointed out that the rules set by the Convention were already reflected in the bilateral agreements it has with three States. The agreements applied only to employees and excluded unemployment benefit. Lastly, *Australia* cited Article 17 of the Convention which allowed the States concerned to conclude arrangements derogating from the Convention provided that such arrangements are, in the aggregate, at least as favourable as the provisions of Convention No. 157. However, although the arrangements concluded by Australia met the Convention's objectives, they were not consistent with its individual provisions.

##### *Definitions*

- 113.** The definitions of "benefits awarded under transition arrangements" given in the Convention (Article 1, paragraph (o)) is not the definition used in Canadian legislation. In *Canada*, age was not a criterion for determining whether someone was entitled to benefits. Furthermore, this Article covered benefits awarded "in consideration of events that have occurred or periods that have been completed outside the current frontiers of the territories of a Member", whereas in Canada the work must have been carried out in the territory or in the armed forces in order to be covered by insurance.

##### *Determination of the applicable legislation*

- 114.** *Switzerland* indicated that in agreements that it has concluded with its neighbours, frontier workers were protected against unemployment by the legislation of their State of residence in the event of full unemployment and the legislation of the State in the territory of which they were employed in the event of partial or bad-weather unemployment. However, this inconsistency with Article 5, paragraph 1, of the Convention could be eliminated through

the conclusion of arrangements consistent with paragraphs 2 and 3 of the same Article. *Canada* also stated that paragraph 1 of this Article is an obstacle to ratification.<sup>55</sup>

115. *Norway* has still not resolved the question of whether seafarers were to be covered by the legislation of the flag State in respect of pension entitlements even if they were resident in another State.

*Maintenance of rights in course of acquisition*

116. The provisions on the maintenance of rights in course of acquisition were an obstacle for *Jordan*, since it had not concluded any agreements with other States to establish a scheme for the maintenance of social security rights. *Mexico* indicated that it was unable to calculate total periods of contributions including periods completed under foreign legislation.

117. *Switzerland* replied that it applied the principle of adding up periods for the maintenance of rights in the course of acquisition. The rule was not observed, however, in the case of unemployment for contracts of less than one year. The *United States* provided for the adding together of periods for the purpose of maintaining rights in course of acquisition. However, for someone who had completed periods under the legislation of three or more States, only the periods completed under the legislation of one of them would be counted.

*Maintenance of acquired rights and provision of benefits abroad*

118. *Jordan* replied that it had no agreements with other States to establish a scheme for the maintenance of rights. *Mexico* did not plan to participate in such a scheme and did not provide family or unemployment benefits abroad. *Indonesia* indicated that it did not ensure the maintenance of acquired rights, while *Cuba* and the *Republic of Moldova* did not ensure the provision of benefits abroad. *Austria* found that some of the directly applicable provisions of the Convention were not in keeping with its domestic legislation. One example was Article 9, paragraph 1, of the Convention concerning the provision of benefits abroad. The maintenance of acquired rights to family and unemployment benefits was an additional difficulty.

119. *New Zealand* and the *Netherlands* also found provision of benefits abroad to be a source of obstacles to ratification. The *United States* indicated that the provision of benefits abroad was restricted to certain cases. The same was true of *Canada* as concerns unemployment benefit, which was not, as a rule, paid abroad except under the agreement concluded with the United States. The same difficulty was experienced with sickness benefits.

120. The bilateral agreements between *Switzerland* and the European Union provided for the provision of unemployment benefit abroad only for a period of three months between two jobs. *Denmark*, *Morocco* and *Tunisia* ensured provision of benefits abroad only where an agreement to that end had been concluded with the States concerned.

121. *Germany* found that it was not possible to provide unemployment benefits abroad. Under the legislation, benefits were provided only if the person concerned was available on the labour market and prepared to accept reasonable new employment. Persons residing

<sup>55</sup> The Confederation of National Trade Unions (CNTU) nonetheless considers that serious consideration should be given to the possibility of ratifying this Convention. It should also be analysed to ensure that it continues fully to meet its objectives.

abroad did not fulfil the requirement since they were outside the control of the competent German department. Furthermore, non-nationals residing abroad received only 70 per cent of old-age, invalidity and survivor's benefits. Lastly, the provision of family benefits abroad remained an obstacle.

122. In *Belgium*, residence in the territory was a requirement for invalidity benefits, death grants and certain non-contributory benefits (allowances for disabled persons and income for the elderly). Similarly, in *Japan* a number of non-contributory benefits were not payable to beneficiaries residing abroad. Studies should therefore be carried out to determine whether these benefits corresponded to the exception allowed by Article 9, paragraph 4, of the Convention.

*Administrative assistance and assistance  
to persons*

123. The *United States* indicated that their legislation did not, as a rule, cover administrative assistance in this area. *Canada* also replied that it made no provision for such administrative assistance. Article 14, on the development of social services to assist persons covered by the Convention, was also a source of difficulties.

*Miscellaneous*

124. The *Netherlands* found that the Convention was detailed and departed from the principle of reciprocity, which made ratification difficult. *Lebanon* also indicated that its legislation was based on reciprocity and asked the Office to provide technical assistance in particular with a view to facilitating the conclusion of bilateral social security agreements. *New Zealand* also observed that the Convention had a very different approach from that of the bilateral agreements it had concluded.
125. *Cyprus* replied that its policy was to conclude bilateral agreements with countries which had large numbers of migrants, and to implement the relevant European standards. The legislation provided for equal treatment and the provision of benefits abroad, but the Government was not planning to ratify Convention No. 157. *Costa Rica* indicated that its legislation went further than the provisions of the Convention. However, it was not planning to ratify the latter and pointed out that the small number of ratifications was indicative of a lack of interest on the part of other member States.<sup>56</sup> *Ecuador* deemed that the relevant national legislation was adequate and was not envisaging ratification for the time being. Lastly, *Pakistan* indicated that it had improved its social security system since ratifying Convention No. 118 and was continuing its endeavours in this area. The Government did not, however, envisage ratifying Convention No. 157.

(c) Need for revision

126. *Germany* was of the view that obstacles to ratification could be eliminated by a revision of the Convention only if unemployment benefits were excluded from its scope. The *Swiss Employers' Union*, which sent in its reply before the June 2001 session of the International Labour Conference, deemed that any decision on the need to revise social security Conventions would be premature before the general discussion of the subject.

<sup>56</sup> The Confederation of Workers of Costa Rica is nonetheless in favour of ratifying Convention No. 157. It believes that to implement Convention No. 157 together with Convention No. 118 would facilitate the establishment of a regional social security system.

**B. Recommendation No. 167**

- 127.** *Austria* indicated that the provisions of the Recommendation were taken into consideration in the context of the conclusion of bilateral or multilateral social security agreements to which it was a party. Although there were formal differences between these agreements and the model provisions contained in Annex I of the Recommendation, these provisions served as the basis for discussion on some specific points. Furthermore, the principle of adding together periods of insurance, referred to in the model agreement reproduced in Annex II, was incorporated in the legislation. Moreover, the *Central African Republic* and *El Salvador* replied that they would ensure the implementation of Recommendation No. 167 as soon as they had ratified Convention No. 157.
- 128.** The *Syrian Arab Republic* was guided by the provisions of the Recommendation in the adoption of regulations in this area. It emphasized however that the provisions of this instrument were strict and their implementation difficult. *Australia* mentioned that budgetary difficulties prevented the full implementation of the Recommendation and considered that the definitions used in the Recommendation substantially differed from those used at the national level.
- 129.** *Barbados* asked for additional information on article 2(a)(i), of Annex I, concerning the legislation applicable to employees who were sent to work in the territory of another State and who did not to replace other employed persons who had completed their period of secondment abroad.
- 130.** *Belgium* considered that the Recommendation, and in particular Paragraph 2, moved away from the principle of reciprocity upon which rested all bilateral agreements it had concluded. The implementation of Paragraph 3, concerning the payment of benefits to beneficiaries residing abroad, would also require a modification to national legislation. Finally, numerous provisions in the two annexes to the Recommendation were not implemented.
- 131.** *Benin* also considered that it faced many obstacles in the implementation of the Recommendation, given that its social security system included only six of the nine contingencies covered by Convention No. 102.
- 132.** As for *Bulgaria*, the provisions concerning the method of apportionment for the maintenance of rights in course of acquisition concerning invalidity, old-age and survivors' benefits, were complex. In addition, national legislation did not cover the recovery of contributions due to the institution of one State in the territory of another (article 32 of Annex I).
- 133.** *Canada* noted the existence of an obstacle related to the method of apportionment for invalidity benefit (article 8, paragraph 4, of Annex I), as its legislation contained restrictions concerning the years of contribution taken into consideration for the granting of benefits. Difficulties were also encountered in the implementation of article 13 of Annex I, concerning the conversion of invalidity or survivors' benefits into old-age benefit. Finally, article 25 of this Annex, concerning the regulation of undue plurality, was liable to pose a problem if any other State decided to withdraw the granting of benefits based on this provision.
- 134.** *Japan* replied that it was not in a position to apply certain provisions of the two annexes to the Recommendation, which ought to be considered solely as models. These difficulties concerned, in particular, the method of integration for the maintenance of rights in course of acquisition (article 14, Annex I) and the provision of non-contributory benefits abroad (article 24).

**135.** In its reply, *Mexico* indicated that its national legislation was not in conformity with subparagraphs (b) and (c) of Paragraph 2 of the Recommendation, concerning the maintenance of acquired rights and those in course of acquisition, as well as the provision of benefits abroad. Difficulties also existed for the application of Paragraph 4, which dealt with the case in which one of the States bound by a bilateral or multilateral instrument had no legislation in force in respect of unemployment benefit or family benefit. Mexico did not compensate the loss or the absence of rights, which could result therefrom. Finally, it indicated that it was not in a position to apply Paragraphs 5, 6 and 7 of the Recommendation, since it had not accepted branches (h) and (i) of Convention No. 118 (unemployment benefit and family benefit).

#### 2.2.4. Remarks

- 136.** Among the **77** member States which responded to the consultation on Convention No. 157 and in addition to the **three** States which had ratified the Convention, **four** States intended to do so, **two** would examine this possibility in the future and **eight** indicated that their legislation was in conformity with the provisions of the Convention.
- 137.** The replies of **two** States were not conclusive as to the ratification prospects of the Convention, while this question would be examined in **15** other States after the completion of reforms or when the necessary studies would be carried out.
- 138.** **Forty-three** States answered that they faced obstacles to the ratification of the Convention.
- 139.** **Nine** among them faced obstacles of an economic or administrative nature. **Thirty** other States answered that there were inconsistencies between their legislation and the provisions of the Convention. These difficulties could be resumed as follows.
- 140.** **Four** States indicated that their legislation was not in conformity with the provisions of the Convention without specifying the nature of the obstacles they were facing. **One** State did not have legislation in the areas covered by the Convention and **one** other considered that it could not proceed to the ratification of Convention No. 157 as long as it could not do so for Convention No. 118. In **two** States, certain restrictions existed regarding the range of social protection for non-nationals. **One** State applied the principles of the Convention by concluding bilateral conventions but not for all contingencies and only for employees. **Two** other States referred to certain general difficulties in the implementation of the provisions of the Convention.
- 141.** In other cases, national legislation was not in conformity with one or the other field covered by Convention No. 157 (certain States met obstacles with respect to several fields). Thus, **three** States faced difficulties in determining the applicable legislation. **Four** States did not fully meet the stipulations relative to the maintenance of rights in course of acquisition. In **three** States, the obstacles concerned the maintenance of acquired rights. The legislation of **15** States did not provide for, or restricted, the provision of some or all of these benefits abroad. **Two** States encountered difficulties in the application of provisions on mutual administrative cooperation and assistance to persons.
- 142.** For **two** States, the fact that the Convention diverged from the principle of reciprocity was an obstacle to ratification while **one** other indicated that the bilateral Conventions to which it was a party were based on another conception.
- 143.** Finally, **four** States were not interested in the ratification of this instrument although their legislation appeared to be in conformity with its provisions.

- 144.** Even if Convention No. 157 has only been ratified by three member States to this day, its ratification prospects, as they result from the consultations, appear to be rather positive. In addition, in most cases, the obstacles concerned the non-conformity of national law to the provisions of the Convention on relatively limited issues. Only **one** State raised the need to revise this instrument and merely in order to exclude one social security branch from its field of application.
- 145.** One of the obstacles mentioned would perhaps merit special attention. This is the provision of benefits abroad, for which 15 States encountered difficulties of application. It should be recalled regarding this issue that the provisions of the Convention in this area are directly applicable only for long-term contributory benefits (invalidity, old-age and survivors' benefits, occupational accident allowance and death grant). Several States mentioned that obstacles existed regarding the provision of unemployment benefits abroad. As already seen, the Convention provides with respect to these benefits that the interested States should endeavour to participate in a system of maintenance of acquired rights which would allow for the provision of benefits on the territory of other States that participate in this system. It is an obligation of best efforts, not of achieving a particular result. It may be useful to make this aspect of the Convention the object of targeted technical assistance by the Office.
- 146.** In general, Convention No. 157 is without doubt the most complex ILO Convention in the area of social security. The dissemination of complementary information on its subject, for example, in the form of an explanatory brochure, could facilitate its implementation. This question is dealt with at the end of this document, in the framework of the follow-up to the general discussion on social security, which took place at the 89th Session (June 2001) of the Conference.
- 147.** Taking into account the above remarks on the possibility of providing technical assistance to States that so desire and the usefulness of developing information on the scope of the provisions of Convention No. 157, the Working Party could propose to invite member States to contemplate ratifying Convention No. 157.
- 148.** The comments formulated by the member States on Recommendation No. 167 were generally identical to those made with respect to Convention No. 157. Some States specified the nature and obstacles that they faced in the implementation of this Recommendation and in particular its annexes which contain model provisions for the conclusion of bilateral or multilateral social security instruments and a model agreement of coordination. These provisions are however destined to facilitate the conclusion of such agreements by member States; they are not compulsory. The Working Party could propose to invite member States to give effect to Recommendation No. 167.

## **II. Medical care and sickness benefit**

### **Introduction**

- 149.** The first two Conventions adopted in this area, the Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Sickness Insurance (Agriculture) Convention, 1927 (No. 25), establish minimum conditions which should be complied with by every system of sickness insurance. They are complemented by the Sickness Insurance Recommendation, 1927 (No. 29), which contains certain general principles shown by practice to be the best calculated to promote just, effective and appropriate organization of sickness insurance. These instruments contain provisions concerning both medical care and sickness benefits.

**150.** The standards of the second generation in this area are, on the one hand, Parts II and III of Convention No. 102, concerning, respectively, medical care and sickness benefit, and on the other hand, the Medical Care Recommendation, 1944 (No. 69). As underlined in the Preamble of this Recommendation, it responded to a need to adopt new measures for the improvement and unification of medical care services, the extension of such services to all workers and their families, including rural populations and the self-employed.

**151.** Finally, the Conference later adopted two instruments which established standards of the third generation for these two branches of social security, namely, the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134).

## 1. Content of standards

### A. Medical care

#### (a) Definition of the contingency

| Convention No. 102<br>(Articles 7 and 8)                                                                                                                                                                       | Convention No. 130<br>(Articles 7 and 8)                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| A condition requiring medical care of a preventive or curative nature. The contingencies covered shall include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences. | Need for medical care of a curative nature and, under prescribed conditions, need for medical care of a preventive nature. |

#### (b) Personal coverage

**152.** Contrary to first-generation standards – in this case, Conventions Nos. 24 and 25 – the personal coverage of Conventions Nos. 102 and 130 is defined not with regard to branches of economic activity and the legal status of employed persons in these branches, but in a much more flexible way based on quantitative criteria. The member States can choose one of three methods proposed for the identification of the protected persons. The latter should include:

| Convention No. 102<br>(Article 9)                                                                                                                                                                                                                                                                                                                                                                                               | Convention No. 130 <sup>57</sup><br>(Article 10)                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees, and also their wives and children;</li> <li>■ or prescribed classes of <i>economically active population</i>, constituting not less than 20 per cent of all residents, and also their wives and children;</li> <li>■ or not less than 50 per cent of all <i>residents</i>.</li> </ul> | <ul style="list-style-type: none"> <li>■ all <i>employees</i>, including apprentices, and their wives and children;</li> <li>■ or prescribed classes of <i>economically active population</i>, constituting not less than 75 per cent of the whole economically active population, including their wives and children;</li> <li>■ or not less than 75 per cent of all <i>residents</i>.</li> </ul> |

#### (c) Benefits

**153.** The table that follows contains a summary account of the minimum benefits that should be provided to the protected persons. Only the principles are presented here, with the

<sup>57</sup> Paragraph 2 of Recommendation No. 134 suggests the extension of medical care to all economically active persons, or even to all residents.

exception, for instance, of provisions relevant to sharing in the cost of medical care received by the beneficiary.

|                                     | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Convention No. 130 <sup>58</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits                  | <p>(Articles 7 and 10)</p> <ul style="list-style-type: none"> <li>■ Preventive care.</li> <li>■ General practitioner care.</li> <li>■ Specialist care at hospitals or outside.</li> <li>■ The essential pharmaceutical supplies as prescribed.</li> <li>■ Hospitalization where necessary.</li> <li>■ In case of pregnancy, confinement and their consequences: pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives and hospitalization were necessary.</li> </ul>    | <p>(Articles 8 and 13)</p> <ul style="list-style-type: none"> <li>■ The benefits enumerated in Convention No. 102; and also</li> <li>■ dental care;</li> <li>■ medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances.</li> </ul> <p>The last two categories can nevertheless be excluded by the States whose economy and medical facilities are insufficiently developed and who have made a declaration to this effect at the time of ratification.</p> |
| Conditions for securing the benefit | <p>(Article 11)</p> <p>The right to medical care can be made conditional upon the fulfilment of a qualifying period.</p>                                                                                                                                                                                                                                                                                                                                                                                              | <p>(Article 15)</p> <p>idem.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Duration of the benefit             | <p>(Article 12)</p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted throughout the contingency covered.</li> <li>■ In case of a morbid condition, its duration may be limited to 26 weeks in each case, or even 13 weeks for the States designated in Article 3 of the Convention.</li> <li>■ The duration of medical care shall be prolonged as long as the beneficiary is entitled to sickness benefit (see below) and in case of diseases recognized as entailing prolonged care.</li> </ul> | <p>(Article 16)</p> <ul style="list-style-type: none"> <li>■ idem.</li> <li>■ The duration of benefits can be limited to 26 weeks only when the beneficiary ceases to belong to the categories of persons protected for a case of sickness which started while he belonged to the said categories.</li> <li>■ idem.</li> </ul>                                                                                                                                                                                    |

## B. Sickness benefit

### (a) Definition of contingency

**154.** Regarding sickness benefit, the definition of the contingency is identical in Convention No. 102 (Article 14) and Convention No. 130 (Article 7(b)). it is incapacity for work resulting from a morbid condition and involving suspension of earnings.<sup>59</sup>

<sup>58</sup> Recommendation No. 134 provides that the supply of medical aids and services for convalescents should be included in medical care (Paragraph 3). In addition, medical care benefits should not be made subject to a qualifying period (Paragraph 4). Finally, where a beneficiary ceases to belong to the categories of persons protected, the medical care should be provided throughout the contingency for a case of sickness which started while he belonged to the said categories (Paragraph 5).

<sup>59</sup> By virtue of Paragraph 8 of Recommendation No. 134, sickness benefits should also be granted in case of absence from work involving loss of earnings, when this absence is justified on the ground that the persons concerned are required to undergo curative or preventive medical care;

## (b) Personal coverage

**155.** Regarding sickness benefit, the personal coverage of Conventions Nos. 102 and 130 is defined in a similar way as for medical care. The protected persons must comprise:

| Convention No. 102<br>(Article 15)                                                                                                                                                                                                                                                                                                                                                                                                                                    | Convention No. 130 <sup>60</sup><br>(Article 19)                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ Prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees.</li> <li>■ Or prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents.</li> <li>■ Or all <i>residents</i> whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 67.</li> </ul> | <ul style="list-style-type: none"> <li>■ All employees including apprentices.</li> <li>■ Prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population.</li> <li>■ All residents whose means during the contingency do not exceed certain limits.</li> </ul> |

## (c) Benefits

**156.** In contrast to medical care, which provides benefits in kind, sickness benefits give rise to cash payments. The following benefits should be provided to the protected persons:

|                                     | Convention No. 102                                                                                                                     | Convention No. 130                                                                                                                                                                                                                                                                                                  |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits                  | <i>(Articles 13, 65, 66 and 67)</i><br>Periodical payments, corresponding to at least 45 per cent of the reference wage. <sup>61</sup> | <i>(Articles 18, 22, 23, 24 and 27)</i><br>Periodical payments, corresponding to at least 60 per cent of the reference wage. In addition, in case of death of the beneficiary, a funeral benefit shall be paid to his survivors, or any other dependants or to the person who has borne the expense of the funeral. |
| Conditions for securing the benefit | <i>(Article 17)</i><br>The right to the sickness benefit can be made conditional upon the fulfilment of a qualifying period.           | <i>(Article 25)</i><br>idem.                                                                                                                                                                                                                                                                                        |

isolated for the purpose of quarantine; placed under medical supervision for the purpose of rehabilitation; or on convalescent leave.

<sup>60</sup> Recommendation No. 134 encourages member States to progressively extend the application of national legislation in this area to all economically active persons, and even to all residents (Paragraph 11).

<sup>61</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above, paras. 28-30.

|                         | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                     | Convention No. 130                                                                                                                                                                                                                                                                                                                      |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Duration of the benefit | <p><i>(Article 18)</i></p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted throughout the contingency.</li> <li>■ Nevertheless, a three-day waiting time may be established.</li> <li>■ The duration of the benefit can be limited to 26 weeks in each case of sickness. This duration may be reduced for the States which have made a declaration under Article 3 of the Convention.</li> </ul> | <p><i>(Article 26)</i><sup>62</sup></p> <ul style="list-style-type: none"> <li>■ idem.</li> <li>■ idem.</li> <li>■ The duration of benefits can be limited to 52 weeks in each case of incapacity. For the States which have made a declaration under Article 3 of the Convention, this duration can be limited to 26 weeks.</li> </ul> |

## 2. Previous examination by the Working Party

157. The Working Party examined Convention No. 130 in March 1996.<sup>63</sup> The documents which served as the basis for this examination underlined that this Convention, which had revised Conventions Nos. 24 and 25, had received a small number of ratifications. On the basis of this observation, the Governing Body invited member States to contemplate ratifying Convention No. 130 and to inform the Office of any obstacles or difficulties encountered that might prevent or delay its ratification, as well as of the possible need for revision of this Convention. At its November 1996 session<sup>64</sup> the Governing Body reiterated this invitation specifically with regard to the States parties to Conventions Nos. 24 and 25 and added an invitation to contemplate denouncing at the same time the two older Conventions. In addition, the Governing Body deferred the decision to shelve Conventions Nos. 24 and 25 while waiting that the Office submit to it the information requested regarding the ratification prospects of Convention No. 130.

158. Recommendations Nos. 29, 69 and 134 were examined by the Working Party at its meeting of March 2000.<sup>65</sup> Since the provisions of Recommendation No. 134 were closely linked to those of Convention No. 130, the Governing Body adopted similar decisions with respect to these two instruments. Thus, it invited member States to give effect to Recommendation No. 134 and to inform the Office of any obstacles and difficulties encountered in the implementation of this Recommendation. The document which served as a basis for the examination of Recommendation No. 69 noted that this instrument related to an area – the organization of medical care services – which was dealt with by the World Health Organization (WHO) in most of its aspects. While waiting for a possible consultation between the WHO and the ILO on the actual interest of Recommendation No. 69, the Governing Body decided the maintenance of the status quo with regard to it. Finally, the Governing Body noted the obsolete nature of Recommendation No. 29 and the fact that it should be withdrawn. Nevertheless, given that Conventions Nos. 24 and 25 – to which this Recommendation is related – were still in force for a relatively large number of member States, the Governing Body deferred the proposal of withdrawal of

<sup>62</sup> According to Paragraph 13 of Recommendation No. 134, in case of incapacity for work resulting from a sickness and involving suspension of earnings, a cash benefit should be paid throughout the contingency.

<sup>63</sup> Documents GB.265/8/2 and GB.265/LILS/WP/PRS/1.

<sup>64</sup> Documents GB.267/9/2 and GB.267/LILS/WP/PRS/2.

<sup>65</sup> Documents GB.277/11/2 and GB.277/LILS/WP/PRS/4.

Recommendation No. 29 to the Conference until the situation had been re-examined at a later stage.

### 3. Outcome of the consultations

#### A. Convention No. 102 (Parts II and III)

159. The *United Arab Emirates* stated that their legislation respected the provisions of Convention No. 102 with regard to sickness benefit and, in part, medical care. *Austria*, which was already party to the Convention, replied that an obstacle to acceptance of Part III of the Convention (sickness benefit) had been eliminated. However, the Government had still not considered, in depth, the question of its possible acceptance. *Bulgaria* said that studies needed to be undertaken in order to determine whether the provisions of the Convention concerning persons protected for sickness benefit were observed by law.<sup>66</sup>
160. The legislation of *Hungary* was not in conformity with the provisions of the Convention concerning sickness benefit and that of the *Central African Republic* did not cover this branch of social security. In *Jordan* and *Morocco*, medical care was not provided for under national law.
161. *India* stated that its legislation was in line with the provisions of Convention No. 102 concerning medical care and sickness benefit. However, the minimum number of persons protected represented an obstacle to ratification of the Convention. The legislation of the *Russian Federation* respected these provisions of the Convention, but the economic situation of the country would give rise to restrictions concerning the categories of persons protected for medical care. *China* was encountering similar difficulties with respect to medical care, the sole beneficiaries of which were workers in urban areas, their spouses and children being excluded. In addition, the *United States* indicated that the federal health care system covered citizens and other persons legally residing in its territory who were aged or disabled. However, the legislation did not cover the categories of persons provided for by the Convention. *Uruguay* replied that the definition of persons protected for medical care was problematic, except possibly as laid down in paragraph (c) of Article 9, which did not refer to wives and children.
162. As regards the benefits themselves, the legislation of *China* covered only curative medical care, with certain sicknesses such as alcoholism excluded. In the *United States*, the payment of sickness benefit was not provided for by federal legislation. However, certain states had instituted such a system.
163. Finally, in *Tunisia*, the qualifying period for sickness benefit was greater than the maximum authorized by the Convention, while the legislation of *Canada* granted medical care and sickness benefit only for a maximum of 15 weeks, instead of the minimum 26 weeks required by the Convention.

<sup>66</sup> The Bulgarian Industrial Association considered that Bulgarian national law was in line with the provisions of Part III of the Convention.

## B. Convention No. 130

164. A total of 73 member States,<sup>67</sup> of which five<sup>68</sup> had already ratified Convention No. 130, replied to the consultations of the Office regarding the ratification prospects for this Convention, possible obstacles to ratification, and any need for revision of the Convention.

### (a) Ratification prospects

165. According to the replies received from the member States, the procedure for ratification of the Convention should be initiated shortly in *Belgium* and the possibility of ratification was being considered or was due to be considered shortly in three other countries (*Congo*, *Egypt* and *Slovenia*). In addition, *Belarus*, *Lithuania* and the *Republic of Korea* replied that there were no particular obstacles to the ratification of Convention No. 130.

166. Ten States<sup>69</sup> considered that social security reforms under way at national level should be completed before the question of ratification of Convention No. 130 could be considered. In particular, *Romania* had recently amended its legislation concerning medical care and sickness benefit. Other reforms were under way and the Government wished to have technical assistance from the ILO towards this end. Current legislation in *Cyprus* was not in line with Article 10 of the Convention and the question of its ratification would be re-examined after adoption by Parliament of the draft law on the national health system. In addition, *Spain* stated that its legislation offered adequate protection but there were divergences vis-à-vis the Convention because of the rigidity of some of the latter's provisions. The national reforms under way, with the revision of the Toledo Pact, might lead to elimination of these obstacles and to ratification of the Convention.<sup>70</sup> *Bahrain* and *Oman* said that ILO standards would be taken into consideration in the legislative reforms currently under way, taking account of the national situation.

167. *El Salvador*, *Mauritius*, *Panama* and *Poland*<sup>71</sup> replied that in-depth studies should be undertaken before it was possible to take a decision on the issue of ratification of the Convention. Moreover, *Portugal* indicated that it still did not have the necessary data, in particular statistics, to determine whether ratification was possible. *Brazil* emphasized that, since adoption of the Convention, its legislation had been amended several times. Ratification of this instrument would necessitate an in-depth examination by the competent ministry. Furthermore, *Kenya* replied that the fund which administered medical care and

<sup>67</sup> *Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, France, Germany, Greece, Hungary, Indonesia, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Morocco, Netherlands, New Zealand, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Singapore, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom and the United States.*

<sup>68</sup> *Costa Rica, Czech Republic, Ecuador, Germany and Sweden.*

<sup>69</sup> *Colombia, Cyprus, Estonia, Greece, Italy, Malaysia, Romania, South Africa, Spain and the United Kingdom.*

<sup>70</sup> The Trade Union Confederation of Workers' Committees was, however, in favour of ratification of the Convention.

<sup>71</sup> NSZZ "Solidarnosc" considered that Poland should ratify Convention No. 130.

sickness benefits and just had its regulations amended. The possibility of ratifying the Convention would be examined when the capacities of the fund had been evaluated. In addition, *Turkey* stated that this question would be considered later.

(b) Obstacles to ratification

*Economic or administrative difficulties*

168. A total of 12 member States cited economic or administrative difficulties preventing them, for the moment, from ratifying the Convention.
169. As regards economic obstacles, *Bangladesh* replied that it had not reached a level of development which would enable it to ratify Convention No. 130. However, workers employed in industrial or commercial undertakings enjoyed certain benefits in the event of sickness. The *Central African Republic* considered that the Convention met real requirements, but the state of sanitary infrastructures in the country might delay ratification. There were also economic obstacles in *Jordan, Republic of Moldova, Peru, Philippines, Russian Federation, Syrian Arab Republic* and *Thailand*. The Philippines stated, however, that nearly all the provisions of the Convention concerning sickness benefit were being implemented in the country. The obstacles encountered by Peru concerned in particular the list of medical care, not only because of economic difficulties but also because of a lack of staff, especially for specialist care outside hospitals. Economic difficulties also concerned the provision of medical care in the Republic of Moldova, while in the Russian Federation, they had an impact on the rate of sickness benefit. Moreover, *Lebanon* requested technical assistance from the Office in order to examine the possibility of putting in place other sources of funding for social security.
170. The *United Arab Emirates* stated that many provisions of the Convention were implemented in national legislation, but difficulties existed because of the number of competent bodies and the administrative burden that ratification would entail. *France* considered that, in view of its current priorities, which tended towards reform of a regulation adopted in the context of the European Union and the conclusion of bilateral social security agreements, it did not have the possibility of giving the requisite attention to the proposals for ratification of Convention No. 130. Finally, *Latvia* referred to its inadequate administrative capacity and the complexity of the annual report system. The Government was currently considering the implementation of European directives in this area and was taking account of ILO and Council of Europe standards in the reforms of its national social security system. *San Marino* replied that a political crisis had prevented the Government from considering the possibility of ratifying the Convention. Its provisions were, however, being examined by the competent administrations.

*Non-conformity of national legislation*

*General*

171. *Azerbaijan, Cambodia, China* and *Kuwait* replied that their legislation was not in line with the provisions of the Convention. *Uganda* stated that some provisions of the Convention were being implemented at national level, but did not list them. In *Singapore*, the national social security system was based on a different approach from that of the Convention, while the legislation of *Switzerland* was not in line with the provisions concerning the administration of insurance. As for *Qatar*, the obstacle to ratification was the fact that a social security system based on contributions had not been set up in the country, even though citizens received free medical care. In addition, *Morocco* did not have any compulsory sickness insurance system.

*Definition of the contingency*

172. Only one State referred to an obstacle connected with definition of the contingency covered: the legislation of *Suriname* provided the benefits laid down by the Convention only in the case of an industrial accident.

*Persons protected*

173. The legislation of the *Netherlands*<sup>72</sup> did not comply with the provisions of the Convention concerning persons protected. As for *Peru*, the divergence lay in the fact that national law did not provide for the spouses and children of persons receiving social security benefits in the event of invalidity, old age or unemployment to continue to be protected for medical care (Article 12 of the Convention). Obstacles concerning the definition of persons protected for medical care were also noted in *New Zealand*, where children were not eligible for benefits, and in the *Russian Federation*, whose legislation only covered children up to age 14 and not age 15 as provided for by the Convention. In addition, in the *United States*, citizens and legal residents in the territory, whether aged or disabled, were covered by the federal health care system. However, there was no programme benefiting categories of persons provided for by the Convention.

*Medical care*

174. *Barbados* replied that the national health service provided free medical care to nationals, but there was no plan to incorporate such benefits in the national social security system.<sup>73</sup> The legislation of *Cuba* provided for free medical care in hospitals. The reply received revealed that there might be a problem in connection with care given outside hospitals. However, the Government had made it clear that persons without adequate resources to pay for such care received social assistance.
175. In addition, a number of countries stated that some of the benefits provided for by the Convention were not provided for by national law. The medical care not covered varied from one country to another, and included preventive care (*Austria*,<sup>74</sup> *Japan*), specialist care given outside hospitals (*Mexico*), medication (*Russian Federation*), medical rehabilitation (*Austria*, *Indonesia*), and dental care (*Lebanon*, *Russian Federation*). Moreover, the extension of the duration of medical care in the case of sicknesses recognized as entailing prolonged care was encountering implementation difficulties in *Austria*. Finally, in *Algeria*, the period for which a beneficiary who ceased to belong to the categories of persons protected retained the right to medical care for a case of sickness which started while he belonged to the said categories, was in certain cases less than that provided for by the Convention.

*Sickness benefit*

176. The legislation of *Benin* did not provide for the payment of sickness benefits. In the *United States*, provision of such benefits was not laid down by federal legislation, though

<sup>72</sup> The Federal Dutch Trade Union Movement considered, as did the Government, that Convention No. 130 could not be ratified at present. It considered, however, that the provisions of the Convention concerning persons protected were being implemented at national level.

<sup>73</sup> The Barbados Workers' Union stated, however, that the Government should be in a position to ratify the Convention.

<sup>74</sup> The Federal Chamber of Labour was in favour of ratification of the Convention.

the programmes of certain states had established such a system. The legislation of *Hungary* and *Lebanon* was not in conformity either with the provisions of the Convention relating to sickness benefit. However, these two States had not provided any more detailed information on the nature of the divergences noted.

177. In four other States, conditions for granting sickness benefits were not in line with the provisions of the Convention: *Canada* (waiting period of two weeks, except in certain cases), *New Zealand* (conditions of residence in the territory and longer waiting period than that provided for by the Convention), *Switzerland* (reservation clauses for a period up to five years) and *Tunisia* (waiting period of five days). The method for calculating benefits also raised problems in *Austria* and *Switzerland*. In addition, three States replied that the rate of benefits was not calculated by taking account of the beneficiary's previous income (*Australia*, *Bulgaria*,<sup>75</sup> *New Zealand*). As regards the amount of such benefits, there was a problem in *Canada* and the *Netherlands*. Finally, the duration of benefit provision was regarded as an obstacle by four States: *Algeria* (for conditions other than long-term sicknesses), *Canada*, *Switzerland* and *Tunisia*.
178. Finally, the application of provisions concerning payment of funeral benefit was encountering obstacles in *Algeria*, *Indonesia* and *Tunisia* (where it was paid only in the event of death following an industrial accident or an occupational disease).

#### *Equality of treatment*

179. Article 32 of the Convention states that each Member shall, within its territory, assure to non-nationals equality of treatment as regards the right to benefits. That provision constituted an obstacle to ratification of the Convention for *Kuwait*, *Peru* and *Qatar*.

#### *Miscellaneous*

180. *Pakistan* considered that ratification of the Convention was not necessary, since most of its provisions were being implemented and measures had been taken to improve the national social security system.

#### (c) Need for revision

181. *Ecuador*, which is party to Convention No. 130, considered it inadvisable for the Governing Body to decide on the total or partial revision of the Convention. Moreover, the *Confederation of Swiss Employers* had replied, before the June 2001 session of the Conference, that it was too early to decide on this question and that it would be preferable to await the results of a general discussion on social security.

### C. Recommendation No. 134

#### *General*

182. The *Syrian Arab Republic* replied that it took account of the provisions of Recommendation No. 134 when adopting new regulations. However, it emphasized the strictness of the provisions of this instrument, which rendered implementation difficult. As for the *Republic of Moldova*, Paragraphs 3 to 8 of the Recommendation could not be implemented, given that legislation provided only for urgent medical assistance before and

<sup>75</sup> The Bulgarian Industrial Association considered, however, that the legislation was in conformity with the provisions of the Convention and that the latter could be ratified.

during hospitalization. In addition, Paragraph 11 of the Recommendation, on the extension of categories of persons protected, was respected solely in respect of medical care in *Belgium* and for neither branch in *Canada* or *Peru*.

#### *Medical care*

- 183.** *Bulgaria* referred to an obstacle connected with extending the definition of medical care with respect to Convention No. 130. Problems were also cited by *Lebanon*, whose legislation did not cover the cost of eyeglasses (Paragraph 3), while in *Belgium*, those costs were reimbursed only under very strict conditions. The same obstacle arose for *Benin* and *Peru*. Benin pointed out that any extension of medical care to cover costs of eyeglasses and services for convalescents would entail additional costs which could not be borne because of the economic situation of the country.
- 184.** *Bulgaria* and *Peru* replied that their legislation was not in line with Paragraph 4 of the Recommendation aimed at cancelling the qualifying period, nor with Paragraph 5 concerning the duration of benefits where the beneficiary ceased to belong to the categories of persons protected and was affected by a sickness which started while he belonged to the said categories. The latter provision also constituted an obstacle to implementation of the Recommendation for *Belgium*.
- 185.** *Belgium* also stated that, contrary to what was provided for under Paragraph 6, the right to health care in the event of a stay or residence abroad was governed by the principle of territoriality, except in the case of the application of bilateral or multilateral social security conventions. *Peru* emphasized that it applied this provision but considered that the Recommendation should state the maximum length of absence from the territory that would allow the receipt of benefits to continue.
- 186.** In addition, the legislation of *Belgium*, *Peru* and *Tunisia* was not in line with Paragraph 7 of the Recommendation, which lists the cases in which medical care should be provided without the beneficiary sharing in the cost.

#### *Sickness benefit*

- 187.** *Peru* stated that its legislation was not in line with Paragraph 8 of the Recommendation concerning cases of absence from work in which sickness benefits should be paid. Subparagraph (a) of this Paragraph also gave rise to difficulties in *Canada* and *Slovenia*, whose legislation provided for the payment of sickness benefits only if the beneficiary was incapable of working and not if he was undergoing preventive medical care. In addition, in *Canada*, such benefits were paid abroad only if the beneficiary had to undergo treatment which was not available in the country (Paragraph 6).
- 188.** In addition, both *Canada* and the *Philippines* considered that Paragraph 10 was problematic, in view of the fact that their legislation did not provide for securing benefits to a person who was economically active and who had to care for a sick dependant. Finally, implementation of Paragraph 13 was causing difficulties in *Austria* and *Canada*, owing to the fact that it recommended the payment of cash benefits throughout the contingency in the event of incapacity for work resulting from a sickness.

## **4. Remarks**

- 189.** Among the **73** States which responded to the consultation regarding Convention No. 130, **five** had already ratified this Convention, **four** planned to do so and **three** others had indicated that they did not face obstacles in this respect. In addition, **19** States would

examine the issue of the ratification of this Convention at a later date, in particular because they planned to reform their social security system or because they should first study in depth the subjects covered in the Convention. **One** reply did not allow any conclusions to be reached on the existence of ratification prospects in the State concerned.

- 190.** **Forty-one** States answered that the ratification of Convention No. 130 was not possible for the moment. Among them, **14** answered that the obstacles to the ratification of the Convention were of an economic or administrative nature and **one** considered that this ratification was not necessary.
- 191.** **Twenty-nine** States (**three** of which mentioned the existence of economic or administrative obstacles) indicated that their legislation covering certain contingencies did not correspond to the requirements of the Convention. The answer of **five** of these States did not specify the nature and scope of these inconsistencies. **Four** States encountered obstacles of a general nature like the different conception on which national legislation relied, the administration of insurance or the non-compulsory character of the sickness insurance system.
- 192.** The other replies concerned more specific aspects of the Convention. The legislation of **one** State defined the contingency in more restrictive terms than provided in the Convention. In **five** States, the personal coverage was not fully in conformity with the prescriptions of the Convention for one or the other of the two contingencies covered by the Convention. **Nine** States indicated the existence of obstacles concerning the range of medical care offered or the duration of the benefits ensured. For **13** States the obstacles concerned the conditions of award, the amount, or the duration of payment of the sickness allowance. For **three** other States the principle of equality of treatment found in the Convention was an obstacle to its ratification.
- 193.** The consultations seem to permit the conclusion that considerable ratification prospects exist for Convention No. 130. While a large number of States did mention the existence of obstacles to ratification, there was no call for the revision of this instrument. In addition, the difficulties of application mentioned during the consultations do not lead to a general questioning of the relevance of the Convention. It seems that the decision to promote this instrument adopted by the Governing Body in March 1996 could be renewed.
- 194.** The same remarks hold for the accompanying Recommendation No. 134. A certain number of member States mentioned difficulties in the implementation of its provisions which provide for a higher level of benefits. It may be recalled in this respect that Recommendations are limited to giving orientations to member States in the area under consideration and do not have a compulsory effect.
- 195.** The Working Party could propose to invite member States to contemplate ratifying Convention No. 130 and give effect to Recommendation No. 134.

### III. Invalidity, old age and survivors' benefits

#### Introduction

- 196.** In 1933, the Conference adopted six Conventions covering, for each of the three branches examined in this section, on the one hand, industrial and commercial enterprises, liberal professions, outworkers and domestic servants, and on the other hand, agricultural

undertakings.<sup>76</sup> A Recommendation completed the Conventions by setting out the general principles of invalidity, old-age and survivors' insurance.<sup>77</sup> Just like for the social security branches examined above, Parts IX, V and X or Convention No. 102 represent the second-generation standards concerning invalidity, old-age and survivors' benefits respectively. Finally, advanced standards were established by the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and Recommendation (No. 131). In order to ratify Convention No. 128, a State must accept its provisions in respect of at least one of its three branches (Article 2).

## 1. Content of standards

### A. Invalidity benefit

#### (a) Definition of contingency

| Convention No. 102<br>(Article 54)                                                                                                                                    | Convention No. 128 <sup>78</sup><br>(Article 8)                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit. | Incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity. |

#### (b) Personal coverage

**197.** The personal coverage of invalidity benefits is defined in a similar way as the one retained for medical care and sickness benefit.

| Convention No. 102<br>(Article 55)                                                                                                                                                                                                                                                                                                                                                               | Convention No. 128 <sup>79</sup><br>(Article 9)                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ Prescribed classes of <i>employees</i>, constituting not less than 50 per cent of all employees; or</li> <li>■ prescribed classes of the <i>economically active population</i>, constituting not less than 20 per cent of all residents; or</li> <li>■ all <i>residents</i> whose means during the contingency do not exceed certain limits.</li> </ul> | <ul style="list-style-type: none"> <li>■ All <i>employees</i>, including apprentices; or</li> <li>■ prescribed classes of the <i>economically active population</i>, constituting not less than 75 per cent of the whole economically active population; or</li> <li>■ all <i>residents</i> or residents whose means during the contingency do not exceed certain limits.</li> </ul> |

<sup>76</sup> Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39), Survivors' Insurance (Agriculture) Convention, 1933 (No. 40).

<sup>77</sup> Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43).

<sup>78</sup> According to Paragraph 4 of Recommendation No. 131 the definition of invalidity should take into account incapacity to engage in an activity involving substantial gain. In addition, Paragraph 5 provides that a reduced benefit should be provided in respect of partial invalidity.

<sup>79</sup> Paragraph 2 of Recommendation No. 131 suggests the extension of invalidity benefits to persons whose employment is of a casual nature and even to all economically active persons.

## (c) Benefits

|                                     | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                                              | Convention No. 128                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits                  | <p>(Articles 56, 65, 66 and 67)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding to at least 40 per cent of the reference wage.<sup>80</sup></li> <li>■ The rates of periodical payments shall be reviewed following substantial changes in the cost of living.</li> </ul>                                                                                                                                       | <p>(Articles 10, 13, 26, 27 and 28)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding to at least 50 per cent of the reference wage.<sup>81</sup></li> <li>■ idem.</li> <li>■ In addition, each member shall provide rehabilitation services and take measures to further the placement of disabled persons in suitable employment.<sup>82</sup></li> </ul> |
| Conditions for securing entitlement | <p>(Article 57)</p> <ul style="list-style-type: none"> <li>■ Entitlement to benefits may be made conditional upon a completion of a <i>qualifying period</i> which may be 15 years of contribution or employment or ten years of residence.<sup>83</sup></li> <li>■ Nevertheless, a <i>reduced benefit</i> shall be secured to protected persons who have completed a qualifying period of five years of contribution or employment.</li> </ul> | <p>(Article 11)</p> <ul style="list-style-type: none"> <li>■ idem.<sup>84</sup></li> <li>■ A <i>reduced benefit</i> shall be secured to protected persons who have completed a qualifying period of five years of contribution, employment or residence.</li> </ul>                                                                                                                       |
| Duration of benefit                 | <p>(Article 58)</p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted throughout the contingency or until an old-age benefit becomes payable.</li> </ul>                                                                                                                                                                                                                                                                    | <p>(Article 12)</p> <ul style="list-style-type: none"> <li>■ idem.</li> </ul>                                                                                                                                                                                                                                                                                                             |

**B. Old-age benefit**

## (a) Definition of contingency

**198.** Convention No. 102, just like Convention No. 128, defines the contingency regarding old-age benefit in terms of survival beyond a prescribed age (Articles 26 and 15 respectively). Thus, the contingency is based on age and not on the cessation of any gainful activity, although the engagement in such an activity may constitute a cause of suspension of the payment of benefits.

<sup>80</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above, paras. 28-30.

<sup>81</sup> According to Recommendation No. 131, this percentage should be raised to 60 per cent (Paragraph 22). Moreover, national legislation should fix minimum amounts of invalidity benefits so as to ensure a minimum standard of living (Paragraph 23).

<sup>82</sup> This provision does not apply to members who made a declaration in accordance with Article 4 of the Convention at the time of ratification.

<sup>83</sup> A special rule applies where, in principle, all economically active persons are protected.

<sup>84</sup> Recommendation No. 131 suggests the reduction or elimination of the qualifying period in the case of young workers who have not attained a prescribed age, and where the invalidity is due to an accident (Paragraphs 14 and 15).

## (b) Personal coverage

**199.** Regarding old-age benefit, the provisions relevant to the personal coverage are identical to those regarding the invalidity benefit described above (Article 27 of Convention No. 102 and Article 16 of Convention No. 128).

## (c) Benefits

|                                     | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Convention No. 128                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefit                   | <p>(Articles 28, 65, 66 and 67)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding at least to 40 per cent of the reference wage.<sup>85</sup></li> <li>■ The rates of periodical payments shall be reviewed following substantial changes in the cost of living.</li> </ul>                                                                                                                                                                                                                                                                                                                                                             | <p>(Articles 17, 26, 27 and 28)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding at least to 45 per cent of the reference wage.<sup>86</sup></li> <li>■ idem.</li> </ul>                                                                                                                                                                                                                                                                                                                 |
| Conditions for securing entitlement | <p>(Articles 26 and 29)</p> <ul style="list-style-type: none"> <li>■ The <i>prescribed age</i> shall be not more than 65 years.</li> <li>■ Members can nevertheless fix a higher age with due regard to the working ability of elderly persons in the country concerned.</li> <li>■ Entitlement to benefits may be made conditional upon the completion of a <i>qualifying period</i> which may be 30 years of contribution or employment or 20 years of residence.<sup>87</sup></li> <li>■ Nevertheless, a <i>reduced benefit</i> shall be secured to protected persons who have completed a qualifying period of 15 years of contribution or employment.</li> </ul> | <p>(Articles 15 and 18)</p> <ul style="list-style-type: none"> <li>■ idem.<sup>88</sup></li> <li>■ A member may nevertheless fix a higher age with due regard to demographic, economic and social criteria, which shall be demonstrated statistically.</li> <li>■ If the prescribed age is 65 or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in arduous or unhealthy occupations.</li> <li>■ idem.<sup>89</sup></li> <li>■ idem.<sup>90</sup></li> </ul> |

<sup>85</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above, paras. 28-30.

<sup>86</sup> According to Recommendation No. 131, this percentage should be raised to 55 per cent (Paragraph 22). Moreover, national legislation should fix minimum amounts of old-age benefits, so as to ensure a minimum standard of living (Paragraph 23). In addition, the amount of the benefit should be increased in certain cases (Paragraph 18).

<sup>87</sup> A special rule applies where, in principle, all economically active persons are protected.

<sup>88</sup> Recommendation No. 131 provides that the a pensionable age should be lowered in respect of any prescribed categories of persons for which such a measure is justified on social grounds (Paragraph 7).

<sup>89</sup> According to Recommendation No. 131, an old-age benefit should be secured at least to a person protected who has completed a qualifying period which may be 20 years of contribution or employment or 15 years of residence (Paragraph 16).

|                     | Convention No. 102                                                                                                            | Convention No. 128                                                        |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Duration of benefit | (Article 30)<br><ul style="list-style-type: none"> <li>■ The benefits shall be granted throughout the contingency.</li> </ul> | (Article 19)<br><ul style="list-style-type: none"> <li>■ idem.</li> </ul> |

### C. Survivors' benefit

#### (a) Definition of contingency

| Convention No. 102<br>(Article 60)                                                                                                                                                                                                                                                                                                    | Convention No. 128<br>(Article 21)                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ The contingency shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner (father or mother).</li> <li>■ The term "child" means a child under school-leaving age or under 15 years of age, as may be prescribed. (Article 1)</li> </ul> | <ul style="list-style-type: none"> <li>■ idem.<sup>91</sup></li> <li>■ The term "child" covers a child under school-leaving age or under 15 years of age, <i>whichever is the higher</i>. This definition shall also cover a child of a <i>higher age</i> who is an apprentice or student or has a chronic illness or infirmity disabling him for gainful activity, except where the prescribed age is appreciably higher than 15 years. (Article 1).</li> </ul> |

#### (b) Personal coverage

| Convention No. 102<br>(Article 61)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Convention No. 128 <sup>92</sup><br>(Article 22)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ The wives and children of breadwinners in prescribed classes of <i>employees</i>, which classes constitute not less than 50 per cent of all employees; or</li> <li>■ the wives and the children of breadwinners in prescribed classes of the <i>economically active population</i>, which classes constitute not less than 20 per cent of all residents; or</li> <li>■ all <i>resident widows</i> and resident children who have lost their breadwinner and whose means during the contingency do not exceed certain limits.</li> </ul> | <ul style="list-style-type: none"> <li>■ The wives, children and, as may be prescribed, other dependants and breadwinners who were <i>employees</i> or apprentices; or</li> <li>■ the wives, children and, as may be prescribed, other dependants of breadwinners in prescribed classes of the <i>economically active population</i> which classes constitute not less than 75 per cent of the whole economically active population; or</li> <li>■ all widows, all children and all other prescribed dependants who have lost their breadwinner, who are <i>residents</i> and, as appropriate, whose means during the contingency do not exceed certain limits.</li> </ul> |

<sup>90</sup> Recommendation No. 131 provides that a reduced benefit should be secured at least to a person protected who has completed a qualifying period of ten years of contribution or employment (Paragraph 17).

<sup>91</sup> According to Paragraph 12 of Recommendation No. 131, an invalid and dependent widower should enjoy the same entitlements to survivors' benefit as a widow.

<sup>92</sup> Paragraph 3 of Recommendation No. 131 suggests the extension of the application of legislation providing for survivors' benefits to the wives, children and, as may be prescribed, other dependants of persons whose employment is of a casual nature and even all economically active persons.

## (c) Benefits

|                                      | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Convention No. 128                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits                   | <p>(Articles 62, 65, 66 and 67)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding at least to 40 per cent of the reference wage.<sup>93</sup></li> <li>■ The rates of periodical payments shall be reviewed following substantial changes in the cost of living.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          | <p>(Articles 10, 13, 26, 27 and 28)</p> <ul style="list-style-type: none"> <li>■ Periodical payments, corresponding at least to 45 per cent of the reference wage.<sup>94</sup></li> <li>■ idem.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Conditions of entitlement to benefit | <p>(Articles 60 and 63)</p> <ul style="list-style-type: none"> <li>■ In the case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support.</li> <li>■ It is permitted to require that the breadwinner has completed a <i>qualifying period</i> which may be 15 years of contribution or employment, or ten years of residence.<sup>95</sup></li> <li>■ Nevertheless, a <i>reduced benefit</i> shall be secured if the breadwinner has completed a qualifying period of five years of contribution or employment.</li> <li>■ For childless widows, a <i>minimum duration of the marriage</i> may also be required.</li> </ul> | <p>(Articles 21 and 24)<sup>96</sup></p> <ul style="list-style-type: none"> <li>■ In the case of a widow the right to a survivors' benefit may be made conditional on the attainment of a prescribed age. Such age shall not be higher than the age prescribed for old-age benefit. No requirement as to age may be made if the widow is invalid or caring for a dependent child of the deceased.</li> <li>■ idem.<sup>97</sup> Nevertheless, for a benefit payable to a widow, the completion of a prescribed qualifying period of residence by such widow may be required instead.</li> <li>■ idem.</li> <li>■ idem.</li> </ul> |
| Duration of benefit                  | <p>(Article 64)</p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted throughout the contingency.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>(Article 25)</p> <ul style="list-style-type: none"> <li>■ idem.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

<sup>93</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above, paras. 28-30.

<sup>94</sup> According to Recommendation No. 131, this percentage should be raised to 55 per cent (Paragraph 22). Moreover, national legislation should fix minimum amounts of old-age benefits, so as to ensure a minimum standard of living (Paragraph 23).

<sup>95</sup> A special rule applies where, in principle, the wives and children of all economically active persons are protected.

<sup>96</sup> Recommendation No. 131 encourages member States to secure a survivors' benefit at least on the qualifying conditions provided by the recommendation for the invalidity benefit. Moreover, where a certain age is prescribed, a widow below that age should be given every assistance to enable her to obtain suitable employment (Paragraphs 19 and 9 respectively).

<sup>97</sup> A special rule applies where, in principle, the wives and children of all economically active persons are protected.

## 2. Previous examination by the Working Party

200. Following an examination of Conventions Nos. 35, 36, 37, 38, 39 and 40 by the Working Party, the Governing Body decided at its March 1996 session to shelve these instruments and to invite the States parties to these Conventions to contemplate ratifying Convention No. 128. The invitation was extended to all member States in the framework of an examination of the latter Convention. In addition, the Governing Body requested member States to inform the Office of any obstacles or difficulties encountered that might prevent or delay the ratification of Convention No. 128 and the possible needs for revision of this instrument.<sup>98</sup> In March 2000, the Working Party examined the two Recommendations regarding invalidity, old-age and survivors' benefit.<sup>99</sup> The Governing Body invited member States to give effect to Recommendation No. 131 and to inform the Office of any obstacles and difficulties encountered in giving effect to this Recommendation. In addition, it noted that Recommendation No. 43 was obsolete and decided to propose its withdrawal to the Conference in due course.

## 3. Outcome of the consultations

### A. Convention No. 102 (Parts V, IX and X)

201. *Uruguay* considered that its legislation was in conformity with the provisions of the Convention concerning old-age benefit. Moreover, *Kenya* stated that, although it had not yet ratified Convention No. 102, its social security system provided old-age, invalidity and survivors' benefits. The legislation of the *United Arab Emirates* corresponded partially to the provisions of the Convention concerning invalidity and survivors' benefits.

202. *Hungary* replied, without adding any details, that its legislation was not in conformity with the parts of Convention No. 102 concerning old-age, invalidity and survivors' benefits. In addition, the *United States* emphasized that social security benefits were not supposed to be the only sources of income for the persons concerned. *Cuba* replied that overall it observed the provisions of the Convention. However, its legislation did not provide for a review of the rate of long-term benefits so as to adjust them to substantial changes in the cost of living.

203. Other States mentioned the existence of specific obstacles concerning one or the other of the three contingencies considered here. For *Canada*, the difficulty lay in the fact that the old-age benefit was based on contributions and not on previous income. *Suriname* replied that the amount of this benefit was fixed and did not depend on the previous income of the beneficiary. It added that its legislation was not in line with Article 26, under which the prescribed age for entitlement to old-age benefit shall not be more than 65 years. This provision also constituted an obstacle for the *United States*, in view of the fact that the retirement age had gradually been raised to 67 years.

204. As regards invalidity benefit, *Suriname* replied that its legislation provided such benefits only when invalidity was of occupational origin. Moreover, as regards this contingency,

<sup>98</sup> Information relative to these seven Conventions is found in documents GB.265/8/2 and GB.265/LILS/WP/PRS/1.

<sup>99</sup> Documents GB.277/11/2 and GB.277/LILS/WP/PRS/4.

the length of the qualifying period constituted an obstacle in *Austria*,<sup>100</sup> *Canada*, *Slovenia*<sup>101</sup> and *Tunisia*. The legislation of Canada laid down a qualifying period, but also stated that, for entitlement to benefits to commence, contributions needed to have been made recently. In Slovenia, the length of the qualifying period depended on the origin – occupational or otherwise – of the invalidity and the age of the person concerned at the time that the invalidity occurred. In addition, *Uruguay* pointed out that in cases of partial invalidity, its legislation did not provide for the payment of benefits throughout the contingency.

**205.** A number of replies were concerned with survivors' benefit. *Uruguay* considered that there was no obstacle to implementation of this part of the Convention. As for *Austria*, an obstacle lay in the fact that the Convention made it possible to require a minimum duration of the marriage only for the provision of survivors' benefit to childless widows. Another difficulty concerned the length of the qualifying period where the contingency arose after the age of 50. Hence Austria, which is party to Convention No. 102, could not accept Part X. In the *United States*, legislation required that, in order to receive survivors' benefit, childless widows had to have reached the age of 60, which was not provided for by the Convention. The legislation of *Tunisia* differed from the Convention with regard to the length of qualifying period required of the breadwinner to secure eligibility for survivors' benefit. In addition, the amount of benefits was giving rise to difficulties in *Suriname* and the *United States*. In the United States, the method for calculating this benefit was very different from the one used in the Convention and it would be difficult to compare the amounts obtained. Finally, in Suriname, the rate of benefits did not attain the percentage of previous income as laid down by Convention No. 102.

## B. Convention No. 128

**206.** A total of 73 States,<sup>102</sup> of which eight<sup>103</sup> are party to Convention No. 128, replied to the consultation concerning ratification prospects and any need to revise this Convention.

### (a) Ratification prospects

**207.** While *Belgium* had started the procedure for ratification of Convention No. 128, the possibility of doing so was being considered or would be considered shortly by *Congo* and *Egypt*. *Belarus*, *Central African Republic*, *Republic of Korea*, *Lithuania* and *Saint Vincent and the Grenadines* had not encountered any obstacles in this regard. *Slovenia* also considered that there should not be any obstacle to ratification of the Convention,

<sup>100</sup> *Austria* has ratified Convention No. 102 but has not accepted Parts IX and X (invalidity and survivors' benefits).

<sup>101</sup> *Slovenia* has ratified Convention No. 102 but has not accepted Part IX.

<sup>102</sup> *Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, China, Colombia, Congo, Costa Rica, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Italy, Japan, Jordan, Kenya, Republic of Korea, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Morocco, Netherlands, New Zealand, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, Slovenia, South Africa, Spain, Suriname, Sweden, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom and the United States.*

<sup>103</sup> *Austria, Barbados, Czech Republic, Ecuador, Finland, Germany, Netherlands and Sweden.*

given the flexibility clauses which it contained, despite some inconsistencies between national legislation and the Convention with regard to calculation of the rate of benefits and the qualifying period. *Kenya* replied that, although the Convention had not yet been ratified, the legislation provided for invalidity, old-age and survivors' benefits.

- 208.** As for *Romania*, technical assistance from the Office concerning the calculation of periodical payments would enable it to take an important step towards ratification of the Convention. The principles thereof were already respected, the provisions of Parts II, III and IV being incorporated in the new legislation.
- 209.** *Lebanon* had adopted legislation based on the provisions of the Convention, but there were still difficulties in implementing the latter, and it was necessary to gather statistics and perform actuarial studies to prepare for ratification. The objective was to provide old-age benefit without having a negative impact on the economy of the country. Preliminary studies were also necessary in *El Salvador*, *Mauritius* and *Panama*. In *Poland*, the pension system had been modified recently and studies should be conducted on the possibility of ratifying the Convention. Nevertheless, this was a difficult task because of frequent amendments to the legislation.<sup>104</sup>
- 210.** In addition, in *Azerbaijan*, *Colombia*, *Estonia*, *Greece*, *Italy*, *Malaysia*, *South Africa* and the *United Kingdom*, legislative reforms were to be made before the question of the ratification of the Convention could be considered. In *Spain*, the revision of the Toledo Pact, already referred to above, might enable obstacles to the ratification of Convention No. 128 to be removed.<sup>105</sup> Moreover, *Turkey* replied that it would consider the question of ratification of the Convention subsequently. *Bahrain* and *Oman* replied that legislative reforms were in progress and the ILO instruments on social security would be taken into consideration, taking account of the national situation.

(b) Obstacles to ratification

*Economic or administrative difficulties*

- 211.** *Bangladesh*, *Jordan*, *Syrian Arab Republic*, *Thailand* and *Uganda* mentioned the existence of economic difficulties representing an obstacle to ratification of Convention No. 128. However, Bangladesh emphasized that protective measures in favour of the elderly had recently become part of its national legislation. The latter also provided for survivors' benefit in the event of death resulting from an industrial accident. As far as the *Russian Federation* was concerned, it was the provisions of the Convention concerning the minimum amount of benefits, which could not be applied given the very low level of pensions in the country.
- 212.** *France* replied that currently its priorities in the matter were, firstly, the reform of a European Community regulation and, secondly, the conclusion of new bilateral social security conventions. Consequently, it was not in a position to consider proposals for ratification of certain ILO social security Conventions. On the other hand, *Latvia* replied that ratification of the Convention was not possible owing to the inadequacy of its administrative capacity. The ILO and Council of Europe standards were nevertheless taken into account in reforms of the social security system. In *San Marino*, a political crisis had

<sup>104</sup> NSZZ "Solidarnosc" said it was in favour of ratification of Convention No. 128.

<sup>105</sup> The Trade Union Confederation of Workers' Committees considered, however, that there were no obstacles to ratification of the Convention.

prevented the Government from considering the possibility of ratifying the Convention. However, the Convention was being studied by the competent administrations.

#### *Non-conformity of national law*

##### *General*

213. There was no contribution-based social security system in *Qatar*, but its legislation provided for the payment of benefits in particular to widows, orphans and the elderly. In *Cambodia*, *China* and the *United Arab Emirates*, the provisions of the Convention were not reflected in national law. However, Cambodia stated that a draft law provided for old-age, invalidity and survivors' benefits. In *Australia*, legislation concerning old-age and invalidity benefits was not entirely in conformity with the provisions of the Convention. However, the Government considered that, in the absence of glaring inequities, it would be expensive and inappropriate to replace the existing system. In *Denmark*, there were divergences with regard to survivors' benefit. In addition, the *Czech Republic* had ratified the Convention accepting the part relating to old-age benefit but could not accept the other two parts in view of the state of its legislation.

##### *Definition of the contingency*

214. In *Australia*, widows received certain social security benefits, but did not receive survivors' benefit purely on the basis of their status as widows. In *Indonesia*, old-age and invalidity benefits were granted in the event of an accident at work and the legislation did not provide for survivors' benefit. The social security system of *Mexico* was not in conformity with the provisions of Article 15 of the Convention, relating to the contingency covered with respect to old-age benefits. Finally, the legislation of *Suriname* did not cover invalidity to the same extent and did not oblige employers to insure workers in this field.

##### *Personal coverage*

215. In *Suriname*, the personal coverage constituted an obstacle to ratification of the Convention, especially because of the size of the informal economy. Difficulties concerning this point also existed in *Indonesia*, *Japan* and *Mexico*. The methods for determining persons to be protected posed a problem in *Canada*. It was not certain that 75 per cent of the active population were covered for invalidity benefit and the Government did not wish to be bound by such percentages. The reference to the number of residents was not appropriate either, given that benefits were based on contributions and not on residence. Likewise, old-age benefit was not provided to the spouses of contributors, because legislation took account of individual contributions or individual residence circumstances.
216. In some cases, the difficulty was in connection with a particular category of protected persons. Hence, in *New Zealand*, children were not entitled to benefits as provided for by the Convention with regard to survivors' benefit. In addition, the legislation of the *Russian Federation* covered children but defined them as persons aged under 14, which did not correspond to the definition of Article 2(i) of the Convention. The new draft Labour Code provided, however, for raising this age to 16 years. The provisions of the Convention relating to survivors' benefit for children beyond a certain age if they were studying or were disabled were not fully observed in *Canada*. The legislation of *Hungary* was not in conformity either with Article 21 of the Convention, as survivors' benefit was paid solely to widows with two dependent children. Finally, the legislation of *Benin* and the *Russian Federation* did not cover apprentices.

### *Benefits*

217. Certain States cited obstacles to ratification connected with conditions for the provision of benefits covered by Convention No. 128. The *Philippines* mentioned such an obstacle, without specifying what it was. Difficulties might arise in certain cases in *Singapore*, where old-age benefit came under a funded system.
218. *Canada* replied that a specific difficulty existed for old-age benefit, given that its legislation did not provide for the possibility of the benefit being received at a lower age by persons who had been occupied in work deemed to be arduous or unhealthy. In *Mexico*, it was the qualifying period for survivors' benefit which was not in conformity with Article 24 of the Convention. In *Denmark*, the same obstacle existed, but with regard to old-age and invalidity benefits. In *Hungary*, the qualifying period varied according to the age of the person concerned at the time the contingency arose. In some cases this period was greater than the maximum permitted by the Convention. *Austria*, which is party to Convention No. 128, could not accept Parts II and III because of the inconsistencies with its national law, mainly as regards the qualifying period when the contingency arose after age 50. An obstacle connected with the qualifying period might also exist in *Bulgaria*.
219. In addition, *New Zealand* legislation did not provide for benefits to beneficiaries who only partially fulfilled the qualifying conditions. In *Hungary* and *Mexico*, the provisions of the Convention concerning the payment of reduced survivors' benefit were not applied. From 2009 onwards, Hungary would also discontinue payment of reduced old-age benefit. The legislation of *Portugal* did not provide for reduced benefit, but the qualifying periods laid down by the Convention for the provision of such benefit corresponded to the periods laid down in national law for non-reduced benefit.
220. Moreover, *New Zealand* replied that the qualifying period laid down by its legislation was greater than that provided for by the Convention. The same problem arose in *Japan* for invalidity benefit.
221. In *Canada*, *New Zealand* and the *United States*, the method for calculating benefits constituted an obstacle to ratification. The Convention tied the amount of the latter to the family status or income of the person concerned while, for Canada, post-retirement income must not be solely based on social security benefits. In addition, in *Japan* the rate of benefits was lower than that required by the Convention and studies needed to be undertaken in order to determine whether these amounts could be increased. *Suriname* replied that the minimum amounts of old-age and invalidity benefits could not be observed. In the *Philippines*, the rate of periodical payments was lower than that provided for in the Convention for old-age and invalidity benefits; on the other hand, the amount of survivors' benefit was higher than was required by the Convention. Another difficulty arose in *Cuba* and *Mexico*, where legislation did not provide for the periodic review of the amount of benefits as prescribed by Article 29 of the Convention.
222. Finally, the national laws of *Hungary*, *Mexico*, *Republic of Moldova*, *Morocco* and the *Philippines* did not correspond to the provisions of the Convention concerning rehabilitation services for the beneficiaries of invalidity benefit. In *Portugal*, legislation only required that protection in the case of invalidity had to be supplemented by vocational rehabilitation measures.

### *Equality of treatment*

223. *Peru* emphasized that, on a number of points, its legislation went beyond the requirements of the Convention. However it stated that the protection of residents, including non-

nationals, required the application of Convention No. 118, which Peru had not ratified. Observance of equality of treatment also posed a problem in *Qatar*.

#### *Miscellaneous*

**224.** *Canada* considered that the suspension of benefits in the event of absence from the territory, allowed in certain cases by Article 32 of the Convention, could be contrary to equality of treatment and to the provision of benefits abroad, as provided for by international social security agreements.

**225.** *Brazil* emphasized that the Convention was very old and that its legislation had been amended several times since the adoption of the Convention. *Costa Rica* replied that its national legislation went beyond the provisions of Convention No. 128, but considered that the low number of ratifications of the Convention showed a lack of interest in it on the part of other States.<sup>106</sup> Moreover, *Pakistan* considered that the ratification of Convention No. 128 was not necessary, in view of the fact that most of its provisions were already being implemented and measures had been taken with a view to improving the national social security system. *Algeria* replied that its legislation went beyond the provisions of the Convention, but considered that the reference to the “skilled manual male employee” and to the “ordinary adult male labourer” constituted an obstacle. Finally, *Tunisia* described certain provisions of its national legislation which appeared to be in conformity with the provisions of the Convention. However, it did not comment on its ratification prospects.

#### (c) Need for revision

**226.** *Peru* considered that Convention No. 128 ought to be revised in order to delete the reference to the wage of a skilled manual male employee, while for *Algeria*, the reference to the wage of a “skilled manual male employee” and to that of an “ordinary adult male labourer” should be supplemented by a reference to the guaranteed minimum wage where that existed. Conversely, *Ecuador*, which is a party to Convention No. 128, replied that revision of this Convention would not be useful at the moment. In addition, the *Confederation of Swiss Employers* considered, before the June 2001 session of the Conference, that it was premature to take a decision on the need for revision of social security Conventions since a general discussion was due to take place on this subject.

### **C. Recommendation No. 131**

**227.** The *Syrian Arab Republic* was taking the provisions of Recommendation No. 131 as a basis for the adoption of new regulations, but emphasized that the level of requirements in this instrument made its implementation difficult.

#### *Persons protected*

**228.** The legislation of *Belgium* did not apply to casual workers (Paragraph 2(a)), while *Mexico* did not provide for extension of protection to all economically active persons (Paragraphs 2(b) and 3(b)). *Germany* and *Peru* were also encountering difficulties regarding implementation of Paragraphs 2 and 3 of Recommendation No. 131.

---

<sup>106</sup> The Central Workers’ Movement of Costa Rica said it was in favour of ratification of Convention No. 128.

*Invalidity benefit*

229. In general, the definition of invalidity in the Recommendation did not correspond to that which appeared in the legislation of *Portugal* and *Tunisia*. *Belgium* stated that its legislation did not define invalidity, as suggested by the Recommendation, by taking into account incapacity to engage in an activity involving substantial remuneration. In *Tunisia* too, invalidity was defined only as being the reduction by at least two-thirds of working or earning capacity. In addition, *Austria*, *Barbados*, *Belgium*, *Bulgaria* and *Portugal* did not recognize partial invalidity as referred to in Paragraph 5 of the Recommendation.
230. Paragraph 6 of the Recommendation suggests the provision of benefits to certain categories of persons over a prescribed age but who have not attained pensionable age. The legislation of *Mexico* did not provide for such benefits, in particular for persons who had been involuntarily unemployed for a prescribed period (subparagraph (b)). The same difficulty existed in *Portugal* with regard to persons whose unfitnes for work was established or presumed (subparagraph (a)). *Switzerland* was also encountering difficulties with regard to implementing this Paragraph. However, it pointed out that it took the ILO instruments as a basis when revising its social insurance legislation.
231. Certain obstacles mentioned referred to the qualifying period. In *Austria*, the length of this period varied according to age and could be as much as 180 months, while Paragraph 13 stated that it should not exceed five years. In addition, *Algeria*, *Barbados*, *Belgium* and *Peru* replied that their legislation did not provide for elimination of the qualifying period for young workers and where invalidity was due to an accident (Paragraphs 14 and 15). Finally, in *Portugal*, elimination of the qualifying period did not apply in the case of young workers and applied only in case of accident where an industrial accident was involved.

*Old-age benefit*

232. The legislation of *Austria* did not provide for lowering the pensionable age for categories of persons in respect of whom such a measure would be justified on social grounds (Paragraph 7). Implementation of this Paragraph was also problematic in *Portugal* and *Switzerland*. *Peru* replied that it was implementing this provision, but lowering the age required the approval of the Council of Ministers. In addition, *Portugal* stated that its legislation was not in conformity with Paragraph 17 of the Recommendation relative to securing a reduced old-age benefit under certain conditions.

*Survivors' benefit*

233. According to Paragraph 9 of Recommendation No. 131, widows below the age fixed for entitlement to survivors' benefit should be given every assistance. This provision was not reflected in the legislation of *Barbados* and *Peru*.
234. Paragraph 10 provided for granting an allowance to a widow whose husband had fulfilled the prescribed qualifying conditions but who did not herself fulfil the conditions for a survivors' benefit. *Peru* and *Switzerland* reported difficulties regarding implementation of this provision.
235. *Peru* and *Slovenia* also stated that their legislation was not in conformity with Paragraph 11 of the Recommendation, under the terms of which a contributory old-age benefit or a contributory survivors' benefit payable to a widow should not be suspended after a prescribed age solely because the person concerned was gainfully occupied.
236. Finally, *Switzerland* replied that the implementation of Paragraph 12, concerning survivors' benefit for invalid and dependent widowers, was causing difficulties.

*Rate of benefits*

**237.** The *Republic of Moldova* considered that it was not in a position to implement Paragraph 23 of the Recommendation, according to which national legislation should fix minimum amounts of benefits so as to ensure a minimum standard of living. This provision also constituted an obstacle for *Japan*, whose legislation did not specify the minimum amount of old-age benefit.

*Miscellaneous*

**238.** *Slovenia* did not include, as provided for by Paragraph 21, compulsory military service in the qualifying period unless contributions were paid during it. In *Portugal*, it was only taken into account for calculating the rate of pensions paid. Finally, *Algeria* and *Switzerland* reported difficulties in implementing Paragraph 26, according to which benefits should not be suspended solely because the person concerned was absent from the territory of the State.

#### 4. Remarks

**239.** **Seventy-three** member States formulated comments on Convention No. 128 including **eight** States parties to this Convention.

**240.** **Three** States would soon be able to ratify the Convention and **six** others considered that there should be no obstacle in this respect. **One** State asked for technical assistance from the Office with a view to the ratification of Convention No. 128. In addition, the reply of **one** State did not allow any final conclusions to be drawn on the question of ratification prospects. Furthermore, **17** States preferred to wait for the completion of reforms at the national level or the conduct of in-depth studies before reaching a decision on the issue of ratification.

**241.** **Thirty-seven** States were confronted with obstacles regarding the ratification of Convention No. 128. For **nine** among them, these obstacles were economic or administrative while **five** others tended to show a lack of interest in the Convention although their legislation seemed in certain cases to be in conformity with the provisions of the Convention.

**242.** For **24** States (one of which also raised economic difficulties in this respect), the inconsistencies between their legislation and the provisions of Convention No. 128 were an obstacle to the ratification of the latter. **Four** States indicated in general terms that their legislation was not in conformity with the provisions of the Convention. **Three** States, one of which had ratified the Convention, made a general reference to obstacles regarding the application of certain parts of the Convention on certain contingencies. Other replies related to specific aspects of the Convention (some States mentioned obstacles with respect to several of these points). For **four** States, the definition of one of the three contingencies covered by Convention No. 128 did not correspond to the provisions of their legislation. **Nine** States indicated the existence of obstacles related to the determination of the personal coverage. For **11** States, difficulties existed regarding the conditions for the award of benefits, especially the qualifying period, the right to reduced benefits and the waiting period. One of these States had ratified the Convention and met obstacles in the acceptance of two of its parts. The legislation of **eight** States seemed to be contrary to the provisions of the Convention related to the amount of periodical payments and **six** States did not fully meet the requirements concerning rehabilitation services in case of a disability. Finally, *two* States had difficulties in respecting the equality of treatment.

243. Ratification perspectives seemed to exist for Convention No. 128. The obstacles mentioned by certain States seemed relatively limited especially as they often related to one or the other of the three contingencies covered by the Convention. In this respect, it should be recalled that in order to ratify this Convention, it is enough to accept its obligations for one of these contingencies. The Office could provide technical assistance on this subject to the States that so desire.
244. In addition, the **two** requests for revision of this instrument relate to the terms “skilled manual male employee” and “ordinary adult male labourer”. The real meaning of the reference to these concepts has already been explained above (Paragraphs 28-30). In conclusion, Convention No. 128 appears to be up to date and this observation seems to apply also in the case of its accompanying Recommendation No. 131.
245. The Working Party could recommend to invite member States to contemplate ratifying Convention No. 128 and giving effect to Recommendation No. 131.

## IV. Employment injury benefit

### Introduction

246. Injury benefit has been the object of a large number of Conventions and Recommendations. In 1921, a first Convention was aimed exclusively at extending to agricultural workers national legislation on compensation for occupational accidents.<sup>107</sup> To this instrument were added, four years later, two more Conventions and three Recommendations on compensation for occupational accidents and diseases.<sup>108</sup> The last instrument relevant to the first generation in this field is the Workmen’s Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42).
247. Just like the other branches of social security, a part of Convention No. 102 concerns the employment injury benefit (Part VI). The Employment Injury Benefits Convention, 1964 (No. 121), and Recommendation (No. 121) constitute the third generation of standards in this branch of social security.<sup>109</sup> They cover both short-term benefits (in cases of morbid condition or temporary incapacity) and long-term benefits (for cases of invalidity or loss of

<sup>107</sup> Workmen’s Compensation (Agriculture) Convention, 1921 (No. 12).

<sup>108</sup> Workmen’s Compensation (Accidents) Convention, 1925 (No. 17), Workmen’s Compensation (Minimum Scale) Recommendation, 1925 (No. 22), Workmen’s Compensation (Jurisdiction) Recommendation, 1925 (No. 23), Workmen’s Compensation (Occupational Diseases) Convention, 1925 (No. 18), and Workmen’s Compensation (Occupational Diseases) Recommendation, 1925 (No. 24). In addition, Convention No. 19, mentioned above (para. 56), aimed at ensuring equality of treatment between national and foreign workers who were victims of industrial accidents.

<sup>109</sup> The Schedule to Convention No. 121 contains a list of occupational diseases, which was updated in 1980. The agenda of the 90th Session (June 2002) of the Conference includes a question entitled “Recording and notification of occupational accidents and diseases and ILO list of occupational diseases”. On this occasion, the Conference will examine, in particular, the possibility of setting up a simplified mechanism for the revision of the list of occupational diseases which is found in the Schedule to Convention No. 121. See on this question ILC, 90th Session, Geneva, 2002, Report V(1).

support suffered as the result of the death of the breadwinner).<sup>110</sup> Convention No. 121 also provides that States shall take measures to prevent industrial accidents and occupational diseases, provide rehabilitation services and take measures to further the placement of disabled persons in suitable employment (Article 26).

## 1. Content of standards

### (a) Definition of contingency

| Convention No. 102<br>(Article 32)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Convention No. 121 <sup>111</sup><br>(Articles 6 to 8)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The following contingencies where due to accident or a prescribed disease resulting from employment:</p> <ul style="list-style-type: none"> <li>■ a <i>morbid condition</i>;</li> <li>■ <i>incapacity for work</i> resulting from such a condition and involving suspension of earnings;</li> <li>■ permanent <i>loss of earning capacity/invalidity</i> either total or partial (in excess of a prescribed degree);</li> <li>■ loss of support suffered by the <i>widow or child</i> as the result of the death of the breadwinner.</li> </ul> | <p>The following contingencies where due to an employment injury:</p> <ul style="list-style-type: none"> <li>■ <i>idem</i>;</li> <li>■ <i>idem</i>;</li> <li>■ <i>idem</i>;</li> <li>■ loss of support suffered as the result of the death of the breadwinner by <i>prescribed categories of beneficiaries</i>;</li> <li>■ each Member shall prescribe a <i>definition of industrial accident</i>, including the conditions under which a commuting accident is considered to be an industrial accident;</li> <li>■ each Member shall also prescribe a <i>list of occupational diseases</i>, comprising at least the diseases enumerated in Schedule I to the Convention; or include in its legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I; or use a combination of the two methods.</li> </ul> |

### (b) Personal coverage

**248.** Both Convention No. 102 and Convention No. 121 refer exclusively to employees in order to define the personal coverage of the protective measures. The protected persons shall include:

<sup>110</sup> Convention No. 121 allows member States to provide for compensation of employment injury through their general social security scheme.

<sup>111</sup> Recommendation No. 121 lists certain categories of accidents which should be treated as industrial accidents and specifies the conditions under which certain diseases should be regarded as occupational diseases (Paragraphs 5 and 6).

|                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Convention No. 102<br/>(Article 33)</b>                                                                                                                                                                                                 | <b>Convention No. 121<sup>112</sup><br/>(Article 4)</b>                                                                                                                                                                                             |
| <ul style="list-style-type: none"> <li>■ Prescribed classes of <i>employees</i> constituting not less than 50 per cent of all employees, and, for benefit in respect of death of the breadwinner, also their wives and children</li> </ul> | <ul style="list-style-type: none"> <li>■ All <i>employees</i>, including apprentices, in the public and private sectors, including cooperatives, and in respect of the death of the breadwinner, prescribed categories of beneficiaries.</li> </ul> |

## (c) Benefits

**249.** Conventions Nos. 102 and 121 provide for benefits in kind and in cash. The relevant provisions of these two instruments are summarized in the following table.

|                    | <b>Convention No. 102</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Convention No. 121</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits | <p><i>(Articles 34, 36, 65 and 66)</i></p> <ul style="list-style-type: none"> <li>■ Medical care (a list of which can be found in the Convention).</li> <li>■ Periodical payments, corresponding to at least 50 per cent of the reference wage in cases of incapacity for work or invalidity, and 40 per cent of the reference wage in case of death of the breadwinner.<sup>113</sup></li> <li>■ Except in the case of incapacity for work, the rates of periodical payments shall be reviewed following substantial changes in the cost of living.</li> <li>■ Periodical payments may be converted into a lump sum where the degree of incapacity is slight or where the competent authority is satisfied that the lump sum will be properly utilized.</li> </ul> | <p><i>(Articles 10, 13, 15, 18, 19, 20 and 26)</i></p> <ul style="list-style-type: none"> <li>■ <i>idem.</i> Certain types of care at the place of work are added therein.</li> <li>■ Periodical payments, corresponding to at least 60 per cent of the reference wage in cases of incapacity for work or invalidity, and 50 per cent of the reference wage in case of death of the breadwinner.</li> <li>■ In addition, the State must prescribe a minimum amount for these periodical payment.</li> <li>■ <i>idem.</i></li> <li>■ Periodical payments may be converted into a lump sum in exceptional circumstances, and with the agreement of the injured person, when the competent authority has reason to believe that such lump sum will be utilized in a manner which is particularly advantageous for the injured person.</li> <li>■ In case of death of the breadwinner, a funeral benefit shall be, in principle, provided.</li> </ul> |

<sup>112</sup> Recommendation No. 121 suggests the extension of national legislation by stages to any categories of employees which may have been excepted from the protection provided for in the Convention (Paragraph 2). In addition, members should secure the provision of such benefits, if necessary by stages and/or through voluntary insurance, to other categories of the population (Paragraph 3.1).

<sup>113</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above, paras. 28-30.

|                                      | Convention No. 102                                                                                                                                                                                                                                                                                                                                                                                                                         | Convention No. 121                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Conditions of entitlement to benefit | <p>(Article 38)</p> <ul style="list-style-type: none"> <li>■ The benefit shall <i>not</i> be made conditional to the completion of a <i>qualifying period</i>.</li> <li>■ A <i>waiting period</i> of maximum three days can be required only in respect of incapacity for work. In the case of a widow, the right to benefit may be made conditional on her being <i>presumed</i> to be incapable of self-support (Article 32).</li> </ul> | <p>(Article 9)</p> <ul style="list-style-type: none"> <li>■ <i>idem</i>. A <i>period of exposure</i> may be prescribed for occupational diseases.</li> <li>■ The <i>waiting period</i> in respect of incapacity for work can be prescribed by a Member only where the legislation provided for a waiting period at the date on which the Convention came into force and the reason for availing itself of this provision subsists.<sup>114</sup></li> </ul> |
| Duration of benefit                  | <p>(Article 38)</p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted throughout the contingency.</li> </ul>                                                                                                                                                                                                                                                                                                           | <p>(Article 39)</p> <ul style="list-style-type: none"> <li>■ <i>idem</i>.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                        |

## 2. Previous examination by the Working Party

**250.** During a first discussion on Conventions concerning employment injury benefits in November 1997, the Working Party noted that Convention No. 121 had revised Conventions Nos. 12, 17, 18 and 42 but had not closed them to ratification. Each of the previous Conventions had received new ratifications, even after the entry into force of Convention No. 121, while the number of ratifications of the latter was small. In view of this observation, the Working Party requested the Office to prepare a more detailed study on these instruments and deferred their examination to its next meeting.<sup>115</sup>

**251.** The document which was prepared by the Office with a view to this new discussion recognized that Convention No. 121 was detailed and complex but underlined that member States had to a limited degree had recourse to the flexibility clauses which should facilitate its ratification. On the basis of the proposal of the Working Party, the Governing Body invited member States to contemplate ratifying Convention No. 121 (with due consideration to the flexibility clauses it contains) and to inform the Office of any obstacles or difficulties encountered that might prevent or delay ratification of this Convention. It also concluded that the Working Party would re-examine this Convention in the light of information received and the discussion which would take place in the Conference during the general discussion on social security.<sup>116</sup>

**252.** On this occasion, the Governing Body also invited the States parties to Conventions Nos. 17, 18 and/or 42, to contemplate ratifying Convention No. 121 and denouncing at the same time the older Convention to which they were parties.<sup>117</sup> Finally, it decided that the status of Conventions Nos. 17, 18 and 42 would be re-examined in due course, in the light

<sup>114</sup> Recommendation No. 121 suggests the abolition of any waiting period (Paragraph 8).

<sup>115</sup> Documents GB.270/9/2 and GB.270/LILS/WP/PRS/2.

<sup>116</sup> Documents GB.271/11/2 and GB.271/LILS/WP/PRS/1.

<sup>117</sup> Denunciation is automatic in the case of Convention No. 42. In addition, the Governing Body invited the States parties to Convention No. 121 to denounce, as appropriate, Conventions Nos. 17 and 18.

of new ratifications of Convention No. 121 which would cause a substantial decrease in the ratification levels of these Conventions.

- 253.** The Working Party examined, in March 2000, the Recommendations related to these Conventions.<sup>118</sup> Pursuant to this examination, the Governing Body invited member States to give effect to Recommendation No. 121. In addition, it noted that Recommendations Nos. 22, 23 and 24 were obsolete and should be withdrawn. Given that these Recommendations were related to Conventions Nos. 17 and 18 respectively, and taking into account the large number of ratifications of the latter, the Governing Body deferred the proposal of withdrawal of Recommendations Nos. 22, 23 and 24 to the Conference until the situation had been re-examined at a later stage.
- 254.** Finally, even if Convention No. 121 covers the employment injury benefits of agricultural workers, it does not expressly provide that the benefit of compensation for occupational accidents shall be extended to these workers by law. This is precisely the objective of Convention No. 12 which remains therefore relevant in this respect. Consequently, the Governing Body decided the maintenance of the status quo with respect to this Convention.<sup>119</sup>

### **3. Outcome of the consultations**

#### **A. Convention No. 102 (Part VI)**

- 255.** *Uruguay* replied that, although it had not ratified Convention No. 102, the application of Part VI of this Convention did not encounter any obstacles, while the legislation of the *United Arab Emirates* was in partial conformity with these provisions. The *United States* indicated that the various programmes existing in the country met the requirements of Part VI of the Convention. However, because of the structure of the State, federal legislation did not control the provision of benefits. Moreover, *Jordan* emphasized that its legislation contained, in particular, provisions on insurance against industrial accidents and occupational diseases.
- 256.** *Austria*, which was party to Convention No. 102, replied that, as for the part of the Convention concerning sickness benefit examined above, an obstacle to acceptance of Part VI of the Convention had been removed. However, the Government had so far not had the possibility of considering this question in depth. In addition, the beneficiary could be required to share the cost of medical care set out in Article 34 of the Convention. On the other hand, the *Czech Republic*, which had also ratified Convention No. 102, was not yet in a position to accept Part VI. However, the setting up of a new system of compensation for industrial accidents and occupational diseases might enable this question to be re-examined.
- 257.** *India* replied that its legislation provided for benefits in line with the requirements of this part of the Convention. However, there was an obstacle to ratification because of the number of persons protected by this legislation.
- 258.** *Hungary, New Zealand* and *Suriname* stated that their legislation was not in conformity with the provisions of Part VI of Convention No. 102. New Zealand emphasized that the

<sup>118</sup> Documents GB.277/11/2 and GB.277/LILS/WP/PRS/4.

<sup>119</sup> Documents GB.271/11/2 and GB.271/LILS/WP/PRS/1.

provisions relating to the amount of benefits, their length and the conditions for securing entitlement were too prescriptive. In Suriname, in the event of gross fault on the part of the worker, the judge could, at the request of the employer, reduce the amount of benefits granted.

259. A difficulty might also arise in *Bulgaria*, owing to the fact that the medical care referred to in Article 34 of the Convention was not considered as a separate benefit from those provided in the context of sickness insurance.<sup>120</sup> In this respect, it might be appropriate to examine the conditions for the award of benefits.

## B. Convention No. 121

260. The Office received replies from 71 member States<sup>121</sup> to the request for information on Convention No. 121, of which seven<sup>122</sup> were party to this Convention. Recommendation No. 121, which accompanies it, was not the subject of a request for information on the part of the Governing Body.

### (a) Ratification prospects

261. The possibility of ratifying Convention No. 121 would be examined in the near future by *Congo* and *Denmark*. *Switzerland* also considered that this question deserved to be considered. A detailed study of the compatibility of national legislation with the provisions of the Convention might be undertaken if revision of the latter was not envisaged.<sup>123</sup> Moreover, *Benin*, *Brazil*, *Central African Republic*, *Lithuania* and *Saint Vincent and the Grenadines* stated that there was no obstacle to ratification of this instrument, while overall the laws of *Belarus* and the *Russian Federation* were in conformity with its provisions. *Romania* would be in a position to ratify Convention No. 121 when the Senate had adopted the proposed law on insurance against industrial accidents and occupational diseases which was currently tabled. Finally, *Jordan* replied that, although it had not ratified the Convention, its social security code provided for insurance against industrial accidents and occupational diseases.

<sup>120</sup> The Bulgarian Industrial Association considered, however, that national legislation was in conformity with the provisions of Part VI of the Convention.

<sup>121</sup> *Algeria, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Benin, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Italy, Jordan, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Morocco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Singapore, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom and the United States.*

<sup>122</sup> *Chile, Ecuador, Finland, Germany, Netherlands, Slovenia and Sweden.* After replying to the consultation, Chile denounced Conventions Nos. 17 and 18, to which it was also party.

<sup>123</sup> The Swiss Federation of Trade Unions considered that Switzerland should ratify Convention No. 121 now, while the Confederation of Swiss Employers considered that the ILO social security Conventions were too detailed and it was unnecessary to envisage ratifying them.

262. In *Colombia, Czech Republic, Estonia, Greece, Italy, Malaysia, South Africa, Spain*<sup>124</sup> and the *United Kingdom*, the question of ratification of Convention No. 121 could only be examined after national reforms had been completed. In Malaysia, protection first had to be extended to a greater proportion of the population. The Czech Republic stated that this question might be re-examined after the possible adoption of a new system of compensation for industrial accidents and occupational diseases. *Bahrain* and *Oman* indicated that ILO standards would be taken into consideration in the legislative reforms in progress, taking account of the national situation. Finally, in *Turkey*, the possibility of ratifying the Convention would be examined subsequently.

263. In addition, *El Salvador, Mauritius, Panama* and *Poland* considered that in-depth studies should be carried out before the question of ratification of Convention No. 121 could be tackled.

(b) Obstacles to ratification

*Economic or administrative difficulties*

264. *Bangladesh* stated that it was not in a position to ratify Convention No. 121 due to the economic situation of the country. However, national legislation provided for the payment of benefits in the case of industrial accidents and occupational diseases. *Barbados* replied that the provisions concerning protected persons were very difficult to apply in developing countries.<sup>125</sup> In the *Philippines* and *Thailand*, the rate of contributions did not allow benefit amounts that were sufficiently high in terms of the Convention and these rates could not be increased because of the current economic situation.

265. The *United Arab Emirates* emphasized the existence of obstacles to ratification because of the multiple entities responsible for the implementation of national legislation, as well as the administrative workload that ratification would entail. In the *United States*, the various programmes put in place were in conformity with the provisions of the Convention. However, federal legislation did not control the provision of benefits by the states.

266. Similarly, *Latvia* considered that its reduced administrative capacity constituted an obstacle to ratification of the Convention. *France* informed the Office of its current priorities in this field, namely the reform of a European Community regulation and the conclusion of new bilateral social security conventions. For these reasons it was not in a position to examine the question of ratification of Convention No. 121. Finally, *San Marino* replied that a political crisis had prevented the Government from examining the possibility of ratifying the Convention. However, the competent departments of the administration were studying the latter.

*Non-conformity of national legislation*

*General*

267. *Azerbaijan* and *Cambodia* stated that their legislation was not in conformity with the provisions of Convention No. 121. However, Cambodia stated that a proposed law provided for benefits in the event of industrial accidents and occupational diseases. *Canada* replied that national legislation largely reflected the requirements of the Convention, but probably not to a sufficient degree to enable its ratification, because of its

<sup>124</sup> The Trade Union Confederation of Workers' Committees considered, however, that there was no obstacle to the ratification of Convention No. 121.

<sup>125</sup> The Barbados Workers' Union considered that there was no obstacle to ratification.

detailed nature and the number of competent authorities.<sup>126</sup> In *Qatar*, there was no social security system based on the payment of contributions. However, the Labour Code obliged employers to pay benefits to workers who were the victims of industrial accidents and occupational diseases, whether they were nationals or non-nationals. *China* replied that its legislation as a whole was in conformity with the principles of the Convention, but that its implementation needed to be improved.

- 268.** In *Lebanon*, the law on social security provided for the payment of benefits by the national fund in case of industrial accidents and occupational diseases. However, in practice these two contingencies still came under other texts based on the principle of the employer's responsibility. The Government wished to have technical assistance from the Office in connection with, firstly, prevention and protection against industrial accidents and occupational diseases and, secondly, the elaboration of the necessary statistics and actuarial studies. Finally, the social security legislation of *Morocco* did not provide for benefits for industrial accidents and occupational diseases.

#### *Definition of the contingency*

- 269.** Commuting accidents were never considered as industrial accidents in *Peru*. In the *Republic of Korea*, they were recognized as such only if they occurred in a vehicle belonging to the employer.
- 270.** *Peru* also stated that the list of occupational diseases had not yet been adopted (Article 8). In *Suriname*, all the diseases listed in the Schedule to the Convention were not included in such a list.

#### *Personal coverage*

- 271.** *New Zealand* considered that the provisions of the Convention were too prescriptive as regards persons protected. In *Kuwait*, the relevant legislation applied only to nationals; Moreover, certain categories of workers, in particular soldiers and members of the police or national guard, were excluded from its scope. The legislation of *Indonesia* regarding industrial accidents and occupational diseases should be amended as currently certain categories of persons, such as independent workers, fishermen and teachers, were excluded from its scope. The legislation of *Uganda* did not cover fishermen or workers in cooperatives. In *Hungary*, it was foreign students who did not receive benefits in the event of an accident. Finally, in *Norway*, the question whether employment injury benefits should cover all seafarers had not been resolved.

#### *Benefits in kind*

- 272.** The *Republic of Moldova* said that at national level, the majority of medical services were subject to payment. The sharing of the cost of medical care by the beneficiary was also not excluded in *Austria*. *Suriname* replied that, if the employer had not contributed to an insurance for his employees, the provision of medical care and allied benefits in respect of a morbid condition was not guaranteed as required by Article 9, paragraph 1, of the Convention. In the *Philippines*, medical care was covered, except for nursing care and maintenance in hospitals, convalescent homes, sanatoria or other medical institutions.

<sup>126</sup> The Confederation of National Trade Unions (CNTU) considered that the possibility of ratifying the Convention should be seriously considered and a more detailed analysis of its provisions should be made to ensure that it still adequately fulfilled its objectives.

### Cash benefits

273. Certain States referred to obstacles concerning the amount or the arrangements for payment of cash benefits. *Algeria* and *Australia* stated that their national legislation was not in conformity with the provisions of the Convention regarding the minimum amount of cash benefits. *New Zealand* replied that the provisions of the Convention concerning the amount and length of benefits were too prescriptive. *Mexico* referred to certain difficulties connected with taking account of family allowances in the amount of cash benefits. In *Pakistan*, a worker suffering from an industrial accident or an occupational disease received the whole of his salary but only for a period of 180 days. The legislation of *Suriname* did not provide for increments in periodical payments for disabled persons requiring the constant help or attendance of another person. In addition, in *Australia*, benefits could take the form of a lump-sum payment in cases other than those provided for by the Convention.
274. In the case of the death of the breadwinner, the legislation of *Algeria* did not provide for the payment of a funeral benefit. In *Hungary*, this benefit was not granted automatically and did not always cover funeral costs. Finally, in the *Republic of Moldova*, the amount of this benefit was less than that of funeral costs.

### Miscellaneous

275. *Bulgaria* and *Cuba* considered that there was an obstacle to ratification, as their legislation did not provide for the possibility of converting the periodical payments into a lump sum.
276. *Tunisia* summarized the provisions of its legislation concerning calculation of the amount of benefits. These provisions did not appear to be in contradiction with the provisions of the Convention, but the Government did not indicate its intentions with regard to ratification of this instrument. On the other hand, *Costa Rica* stated that its legislation went beyond the provisions of the Convention and it did not envisage ratifying it.<sup>127</sup> Finally, *Singapore* had a system of compensation for industrial accidents and occupational diseases, but considered that the ratification of the relevant ILO Conventions was not necessary.

### (c) Need for revision

277. *Ecuador*, which had ratified Convention No. 121, considered that it was not appropriate to revise it. On the other hand, *Algeria* considered that some provisions of the Convention should be amended. The possibility of converting periodical payments into a lump sum (Article 15) did not appear favourable to the beneficiary. The funeral benefit (Article 18) should be supplemented by a death grant. Finally, the reference to the wage of the skilled manual male employee and of the ordinary adult male labourer should be supplemented by a reference to the guaranteed minimum wage where it existed. *Peru* also considered that the reference to the wage of a skilled manual male employee was contrary to the principle of equality and that Convention No. 121 should be revised accordingly. Moreover, *Canada* supported the updating of the list of occupational diseases, which was the subject of a question placed on the agenda of the 90th Session (2002) of the Conference.
278. One workers' organization and one employers' organization also came out in favour of revising Convention No. 121. For the *Central Workers' Movement of Costa Rica*, the revision should have the aim of restricting the exemptions that it authorized. The possible

<sup>127</sup> The Central Workers' Movement of Costa Rica said that it favoured the ratification of the Convention.

limitation of the personal scope of protection was contrary to the principle of universality. The *Korea Employers' Federation* stated that the definition of commuting accidents should be limited to accidents occurring in vehicles supplied by the employer, as provided for by the legislation of the Republic of Korea.

#### 4. Remarks

- 279.** Among the **71** States which responded to the consultation regarding Convention No. 121, **seven** were parties to this Convention and **four** others could ratify it. **Five** States considered that ratification did not raise any particular difficulty and **two** others indicated that their legislation was on the whole in conformity with its provisions. The answer of **one** State did not allow any clear conclusions to be drawn on its intentions regarding ratification. **Sixteen** member States would reach a conclusion at a later date since legislative reform or in-depth studies were necessary at a first stage.
- 280.** **Thirty-six** States stated that they met obstacles to the ratification of Convention No. 121. **Three** States whose legislation seemed to respect the requirements of the Convention did not apparently plan to ratify while **nine** others faced administrative or economic obstacles.
- 281.** **Twenty-three** States (one of which also mentioned the existence of economic difficulties) noted inconsistencies between their legislation and the provisions of Convention No. 121 (certain States noted the existence of obstacles on several of the points listed below). The social security system of **one** State did not cover this contingency and **three** others had indicated that their legislation was not fully in conformity with the provisions of the Convention without detailing the nature of these inconsistencies. **One** of these States nevertheless noted that a draft Bill providing for the award of such benefits was being examined. For **two** States, the definition of industrial accidents was a problem while the legislation of **two** States was not in conformity with the provisions of the Convention relative to the determination of occupational diseases. **Six** States met difficulties concerning the number of persons who should benefit from protection. In **four** other States, the award of medical care in case of industrial accident or occupational disease did not correspond to the provisions of the Convention. **Eight** States indicated that their legislation was not in conformity to the provisions relative to cash benefits (periodical payments or grants for funeral expenses).
- 282.** Finally, **two** States replied that their legislation did not provide for the possibility of converting periodical payments to a lump sum payment and considered that this constituted an obstacle to ratification. In reality, Article 15 of the Convention sets the conditions which should be fulfilled so that such a conversion may take place. It does not in any way require States to provide for this possibility. This is an example of a provision whose application could be facilitated by a simple explanation of its real meaning.
- 283.** **Two** States and **one employers' organization** proposed the partial revision of Convention No. 121, on relatively limited questions. **One** State also expressed its support for the procedure of updating the list of occupational diseases, which will be submitted to the Conference at its next session. Finally, **one workers' organization** generally supported the revision of the Convention in order to limit the exceptions provided therein. On the contrary, **one** State was opposed to any proposal for the revision of the Convention.
- 284.** The obstacles which seem to prevent or delay the ratification of Convention No. 121 do not reflect an opposition to the principles that it contains but rather technical difficulties concerning one or several specific points. Just like for the other instruments examined, technical assistance could be planned by the Office in order to overcome certain of these obstacles.

- 285.** As already stated, the Conference will examine in particular, at its next session, the possibility of setting up a mechanism for the periodical updating of the list of occupational diseases which figures in Schedule I to Convention No. 121. This discussion does not have any implications for the text of the Convention itself, which appears to wholly retain its relevance.
- 286.** The Working Party could propose to invite member States to contemplate ratifying Convention No. 121.<sup>128</sup>

## V. Unemployment benefit

### Introduction

- 287.** In this area as well, three generations of standards succeeded each other. The first instruments specifically concerning unemployment benefit are the Unemployment Provision Convention, 1934 (No. 44), and Recommendation (No. 44).<sup>129</sup> Convention No. 102, whose Part IV deals with this branch, constitutes a second-generation standard in this area. Finally, the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and Recommendation (No. 176) represent third-generation standards regarding these benefits. The latter instruments also aim at consolidating the system for the protection of the unemployed, through the inclusion of benefits based on insurance and measures of assistance.
- 288.** Moreover, every State which ratifies Convention No. 168 must ensure equality of treatment for all persons protected, without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, nationality, ethnic or social origin, disability or age (Article 6, paragraph 1). This provision shall not prevent the adoption of special measures, in particular those designed to meet the specific needs of categories of persons who have particular problems in the labour market (Article 6, paragraph 2).
- 289.** Finally, the third-generation instruments not only include standards on social security, they also contain provisions on the promotion of productive employment. Thus, every State party to Convention No. 168 shall take appropriate steps to coordinate its system of protection against unemployment and its employment policy.

<sup>128</sup> In March 2000 the Governing Body invited member States to give effect to Recommendation No. 121 which accompanies Convention No. 121.

<sup>129</sup> The main objective of the Unemployment Convention, 1919 (No. 2), is the establishment, in each State party, of a system of free public employment agencies (Article 2). It does not contain provisions concerning the granting of unemployment benefit. In that respect, it provides only that Members which ratify it and have established systems of insurance against unemployment shall make arrangements with the other Members concerned aiming at ensuring equality of treatment between nationals of these different States in the area of unemployment benefit (Article 3).

## 1. Content of standards

### (a) Definition of contingency

| Convention No. 102<br>(Article 20)                                                                                                                                                                      | Convention No. 168<br>(Article 10)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ Suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work.</li> </ul> | <ul style="list-style-type: none"> <li>■ <i>Full unemployment</i>, defined as the loss of earnings due to inability to obtain suitable employment in the case of a person capable of working, available for work and actually seeking work. <sup>130</sup></li> <li>■ In assessing the suitability of employment, account shall be taken, in particular, of the age of unemployed persons, their length of service in their former occupation, their acquired experience, the length of their period of unemployment, the labour market situation, the impact of the employment in question on their personal and family situation and whether the employment is vacant as a direct result of a stoppage of work due to an ongoing labour dispute.</li> <li>■ Each member shall endeavour to extend the protection of the Convention, to cases of loss of earnings due to <i>partial unemployment</i> and suspension or reduction of earnings due to a <i>temporary suspension of work</i>, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature.</li> <li>■ Each member shall in addition endeavour to provide the payment of benefits to part-time workers who are actually seeking full-time work. <sup>131</sup></li> </ul> |

**290.** Convention No. 168 contains moreover specific provisions on the new applicants for employment (Part VII). It provides in this respect that Member shall take account of the fact that there are many categories of persons seeking work who have never been, or have ceased to be, recognized as unemployed or have never been, or have ceased to be, covered by schemes for the protection of the unemployed. The States parties to Convention No. 168, which have not excluded the application of this part of the Convention at the time of their ratification, should provide benefits to at least some of these categories of persons.<sup>132</sup>

### (b) Personal coverage

**291.** Concerning unemployment benefits, the personal coverage of Conventions Nos. 102 and 168 relates to the number of employees or the residents. Contrary to other branches,

<sup>130</sup> Convention No. 168 also determines the cases in which compensation should be refused, withdrawn, suspended or reduced, in particular when the person concerned refuses to accept suitable employment (Article 21). In this respect, Paragraph 14 of Recommendation No. 176 lists certain types of employment to which the concept of suitable employment should not apply.

<sup>131</sup> A Member which makes a declaration by virtue of Article 5 of Convention No. 168 can nevertheless defer the application of these last two provisions.

<sup>132</sup> Social benefits should be provided to at least three of the ten categories of persons enumerated in Article 26 of the Convention.

there is no method of identification based on the economically active population. The protected persons should include:

| Convention No. 102<br>(Article 21)                                                                                                                                                                                                         | Convention No. 168 <sup>133</sup><br>(Article 11)                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>■ Prescribed classes of employees, constituting not less than 50 per cent of all employees; or</li> <li>■ all residents whose means during the contingency do not exceed certain limits.</li> </ul> | <ul style="list-style-type: none"> <li>■ Prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees<sup>134</sup> and apprentices.</li> </ul> |

(c) Benefits

**292.** The type of benefits provided in Conventions Nos. 102 and 168, the conditions which may be set for their attribution and their duration are presented in the table below.

|                    | Convention No. 102                                                                                                                                                                     | Convention No. 130                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature of benefits | <p>(Articles 22, 65, 66 and 67)</p> <ul style="list-style-type: none"> <li>■ Periodical payments corresponding to at least 45 per cent of the reference wage.<sup>135</sup></li> </ul> | <p>(Articles 13 to 16)</p> <ul style="list-style-type: none"> <li>■ Periodical payments corresponding to at least 50 per cent of the reference wage.</li> <li>■ In cases of <i>full unemployment</i>, the periodical payments shall be calculated in such a way as to provide the beneficiary with partial and transitional wage replacement and, at the same time, to avoid creating disincentives whether to work or to employment creation.</li> <li>■ For the benefits provided <i>beyond the initial period</i>, special rules of calculation may apply. Nevertheless, these benefits, in combination with all the other benefits to which the unemployed may be entitled, shall guarantee them healthy and reasonable living conditions in accordance with national standards.</li> </ul> |

<sup>133</sup> Recommendation No. 176 invites member States to extend progressively the application of their legislation concerning unemployment benefit to cover all employees (Paragraph 16).

<sup>134</sup> The public employees whose employment up to normal retiring age is guaranteed by national laws or regulations may be excluded from protection (Article 11, para. 2).

<sup>135</sup> The rules for the calculation of the minimum rate of these periodical payments are presented above (paras. 28-30).

|                                     | Convention No. 102                                                                                                                                                                                                                                                                                           | Convention No. 130                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Conditions for securing the benefit | <p>(Articles 23 and 24) <sup>136</sup></p> <ul style="list-style-type: none"> <li>■ The right to benefits can be made subject to the fulfilment of a <i>qualifying period</i> considered necessary to preclude abuse.</li> <li>■ A waiting period of seven days can be prescribed. <sup>137</sup></li> </ul> | <p>(Articles 17 and 18) <sup>138</sup></p> <ul style="list-style-type: none"> <li>■ idem.</li> <li>■ In case of full unemployment, the <i>waiting period</i> shall not exceed seven days or ten days (for States having made a declaration in accordance with Article 5 of the Convention).</li> </ul>                                                                                                                                                                                                                                                                                                                                       |
| Duration of the benefit             | <p>(Article 24)</p> <ul style="list-style-type: none"> <li>■ The benefit shall be granted <i>throughout</i> the contingency covered.</li> <li>■ Nevertheless, the duration of the benefit can be <i>limited</i> to 13 or 26 weeks, depending on the case, within a period of 12 months.</li> </ul>           | <p>(Article 19)</p> <ul style="list-style-type: none"> <li>■ idem.</li> <li>■ The <i>initial duration</i> of payment of the benefit may be limited to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months. For the States which avail themselves of a temporary exception, this duration can be of 13 weeks in a period of 12 months</li> <li>■ In the event of unemployment <i>continuing</i> beyond this initial period, the duration of payment of benefit may be limited to a prescribed period and may be calculated in the light of the resources of the beneficiary and his or her family.</li> </ul> |

## 2. Previous examination by the Working Party

**293.** Convention No. 168 and Recommendation No. 176 were not examined by the Working Party since they were adopted after 1985. In November 1996, following an examination of Convention No. 44 by the Working Party, the Governing Body invited the States parties to this Convention to contemplate ratifying Convention No. 168 and denouncing Convention No. 44 at the same time, and to inform the Office of any obstacles or difficulties encountered that might prevent or delay ratification of Convention No. 168. The Governing Body also deferred the decision to shelve Convention No. 44 while waiting for the Office to communicate to it information on the ratification prospects of Convention No. 168. <sup>139</sup>

**294.** The Working Party examined Recommendation No. 44 in March 2000. Pursuant to this examination, the Governing Body noted that this Recommendation was obsolete and should be withdrawn. Nevertheless, given that 12 States were still bound by Convention

<sup>136</sup> Both Convention No. 102 and Convention No. 168 contain particular rules for seasonal workers.

<sup>137</sup> Counting days of unemployment before and after temporary employment lasting not more than a prescribed period as part of the same case of suspension of earnings.

<sup>138</sup> According to Recommendation No. 176, Members should endeavour to protect workers who are experiencing hardship in a waiting period (Paragraph 17). In addition, when the duration of payment of benefit is limited by national legislation, it should be extended until pensionable age for unemployed persons who have reached a prescribed age prior to the pensionable age (Paragraph 19).

<sup>139</sup> Documents GB.276/9/2 and GB.267/LILS/WP/PRS/2.

No. 44 to which this Recommendation was related, the Governing Body decided to defer the proposal of withdrawal of Recommendation No. 44 to the Conference until the situation had been re-examined at a later stage.

### 3. Outcome of the consultations

#### A. Convention No. 102 (Part IV)

295. For the *Czech Republic*, which is already a party to Convention No. 102, the acceptance of Part IV of this Convention should not raise a problem since this country had already ratified the European Code of Social Security.

296. In *India, Jordan, Morocco, Pakistan, Philippines, Singapore, Thailand, Uganda* and the *United Arab Emirates*, legislation did not provide for the award of unemployment benefits. However, Thailand was considering the introduction of such benefits in its social security system. Negotiations were under way on this subject in the *Philippines*, but there was an obstacle related to settling the financing of this system. *Tunisia* indicated that its legislation provided solely for payment of compensation in case of dismissal for economic or technological reasons when the enterprise was in a state of insolvency. A similar obstacle existed for *Algeria*; consequently, this country was in a position to accept all parts of Convention No. 102 except the one relative to unemployment benefits.

297. The *United States* replied that the overall system of unemployment benefits seemed to be consistent with the provisions of Convention No. 102. However, by reason of the division of competences between the federal and state levels, federal legislation did not control the provision of social benefits.

298. *Suriname* indicated that its legislation did not conform to the provisions of Part IV of the Convention. *Uruguay* provided for the payment of unemployment benefits but the personal coverage of its legislation seemed more restrained than the one provided by the Convention and studies should be undertaken on this issue. The legislation of *Argentina, Canada, the Republic of Korea* and *New Zealand*<sup>140</sup> fixed a longer waiting period than the maximum set by the Convention. In addition, in *Argentina, Canada* and *Moldova* the provisions of the Convention on the calculation of the minimum amount of benefits were not applied.

#### B. Convention No. 168

299. The request for information was addressed to the States party to Convention No. 44. It concerned the obstacles and difficulties encountered that might prevent or delay the ratification of Convention No. 168. Sixty member States<sup>141</sup> responded to this request,

<sup>140</sup> The New Zealand Council of Trade Unions (NZCTU) considered that the waiting period provided by national legislation is much too long.

<sup>141</sup> *Argentina, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Indonesia, Italy, Jordan, Latvia, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Morocco, Netherlands, Oman, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Russian Federation, San Marino, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom* and the *United States*.

including eight<sup>142</sup> States party to Convention No. 44 and five of the six States<sup>143</sup> which had ratified Convention No. 168.

(a) Ratification prospects

**300.** *Peru* and *Slovenia* replied that the ratification of Convention No. 168 was under consideration. However, Slovenia could not ratify in the immediate future because of certain difficulties, enumerated below. In addition, the question of the ratification of this Convention was at the moment, or would shortly be, under examination in Germany, *Congo*, *Costa Rica* and *Mauritius*. The possible economic consequences of ratification of this Convention as well as the existing inconsistencies between its provisions and the national legislation were under examination in *Belarus*. In this respect, this country wished to benefit from the assistance of the Office. *Lithuania* replied that it did not face any obstacles to the ratification of Convention No. 168. Finally, the question of the ratification of this instrument would be examined at a later stage in *Turkey*.

**301.** In *Panama* in-depth studies on the impact of Convention No. 168 should be undertaken before it would be possible to have an opinion on the question of its ratification. This question would be examined after the completion of legislative reforms in *Colombia*, *Estonia*, *Greece*, *Italy*, *Malaysia*, *South Africa* and the *United Kingdom*. Reform was also under way in *Spain*. This could lead to the elimination of obstacles to ratification.<sup>144</sup> In addition, *Bahrain* and *Oman* indicated that ILO Standards in this area were taken into account in the framework of the reform of their social security laws in light of national conditions.

(b) Obstacles to ratification

*Economic or administrative difficulties*

**302.** Economic obstacles were mentioned by ten member States. *Bangladesh* and the *Central African Republic* replied that they were not in a position to ratify the Convention because of their economic situation. Bangladesh nevertheless had taken a certain number of measures like the creation of the Employment Bank which provided credit support to young unemployed persons. Similarly, by reason of its economic condition, *Jordan* was not in a position to set up unemployment insurance at the moment. *Indonesia* considered that the provisions of the Convention were relevant but ratification was not possible because of the economic crisis and the large number of unemployed persons. *Pakistan* underlined that it was a developing State and could not therefore ratify the Convention. *Poland* indicated that by reason of the relatively high unemployment level, the demographic boom and its limited budgetary resources, the current system of protection against unemployment would be modified. The Government planned in particular to

---

<sup>142</sup> *Bulgaria, Cyprus, France, Italy, Netherlands, Peru, Spain* and the *United Kingdom*.

<sup>143</sup> *Brazil, Finland, Romania, Sweden* and *Switzerland*. The ratification of Convention No. 168 by *Switzerland* involved the immediate denunciation of Convention No. 44.

<sup>144</sup> The Confederation of Trade Union Committees considers however that the revision under way of the Toledo Pact cannot constitute an obstacle to the ratification of Convention No. 168. On the contrary, the ratification could represent a stimulus for tripartite negotiation.

introduce a system fully based on the principle of insurance against unemployment. In addition, it referred to certain obstacles of a legal nature, mentioned below.<sup>145</sup>

- 303.** For *Suriname*, the establishment of the system required by Convention No. 168 would involve adverse financial consequences. In the *Syrian Arab Republic*, the costs of legislative amendments needed for the ratification of the Convention would be difficult to bear by reason of the economic situation currently prevailing in the country, and this, even if the flexibility clauses contained in the Convention were taken into account. In *Thailand*, the social security system was relatively recent and the rate of contributions did not allow the provision of benefits at the level required by Convention No. 168. It would be risky to raise the rate of these benefits while the economic recession generated uncertainty regarding the stability of the Social Security Fund. The Government planned however to set up an unemployment benefits scheme.
- 304.** Finally, for the *Barbados* the provisions relative to medical care of those receiving unemployment benefits (Article 23) and the provisions pertaining to new applicants for employment (Article 26) raised problems because their implementation would involve considerable expenses.<sup>146</sup>
- 305.** The *United Arab Emirates* and *Latvia* mentioned the existence of obstacles of an administrative nature to the ratification of Convention No. 168. In addition, *France* replied that its current priorities in this area were the reform of a European regulation and the conclusion of new bilateral social security conventions. Consequently, it was not possible to examine the invitation to ratify Convention No. 168. France recalled nevertheless, that it was a party to Convention No. 44 and watched over its proper application. In addition, the *United States* replied that overall, federal and state legislation was in conformity with the provisions of the Convention, but the rights and benefits were not controlled by the federal authorities. Finally, by reason of a political crisis, *San Marino* could not examine the possibility of ratifying the Convention. However, the administration examined the provisions of this instrument.

#### *Non-conformity of national legislation*

##### *General*

- 306.** *Uganda* replied that it was not yet in a position to ratify Convention No. 168, without indicating the reason for this. In addition, *Qatar* did not have a social security system founded on contributions while *Azerbaijan* and *Cambodia* replied that their social security laws were not in full conformity with the provisions of the Convention.

##### *Definition of the contingency*

- 307.** The respective laws of *Cuba*, *Indonesia*, *Lebanon*, *Morocco*, *Philippines*, *Qatar* and *Tunisia* in the area of social security did not cover unemployment benefits. In other countries, such protection existed but the contingencies covered did not correspond to

<sup>145</sup> OPZZ considered that there were no obstacles to the ratification of Convention No. 168. NSZZ “Solidarnosc” underlined the importance of the Convention and the fact that its ratification would reinforce the employment policy of the Government. It considered that ratification should not be delayed.

<sup>146</sup> However, the Barbados Workers’ Union believed that the existence of a system of unemployment benefits and the on-going discussions in the country with a view to the adoption of a plan linking employment security and employment creation should facilitate the ratification of Convention No. 168.

those provided in the Convention. In *El Salvador* and *Mexico* unemployment benefits were not statutorily provided except in case of unjustified dismissal. The *Czech Republic* replied that the provisions of the Convention relative to the contingencies covered were not implemented but a new law would be adopted in this area. *Poland* indicated, without further specification, that national legislation was not fully in accordance with the provisions of paragraphs 2 and 3 of Article 10. The *Bulgarian Industrial Association* also mentioned that Article 10 of the Convention was not applied at the national level.

- 308.** Certain States excluded from coverage only some of the contingencies provided in Convention No. 168. Thus, partial unemployment (Article 10(2)(a) of the Convention) was not covered by the legislation of *Argentina, Austria, Cyprus*,<sup>147</sup> the *Russian Federation* and *Slovenia*. In Austria, a partial compensation could be awarded, but this was not a right protected by law. In addition, the temporary suspension of work was not covered in *Austria* and *Slovenia*. The provisions relative to this contingency were respected in part only in *Canada*.<sup>148</sup> In *Denmark*, those prevented from working because of a strike did not receive benefits if at least 65 per cent of the members of an unemployment insurance fund participated in this strike. In addition, part-time workers seeking full-time employment did not receive benefits in *Argentina, Austria* and *Cyprus*. In *Slovenia*, these benefits were granted to part-time workers who were employed only up to half of the working time. Finally, the legislation of *Canada, Poland* and *Slovenia* was not in accordance with the provisions of the Convention relative to new applicants for employment (Article 26). Canada indicated however, that these provisions could be satisfied by certain provincial welfare schemes and Slovenia specified that the universal right to social aid was ensured.

#### *Protected persons*

- 309.** *Mexico* indicated that it faced obstacles to ratification concerning the number of protected persons.

#### *Benefits*

- 310.** In the *Czech Republic*,<sup>149</sup> the *Netherlands*<sup>150</sup> and *Poland*, the rate of unemployment benefits was not in conformity with the provisions of Article 15 of the Convention. In *Argentina*, the compensation paid was well above 50 per cent of the prior income of the beneficiary but only during a period of four months and with a maximum of \$300. *Canada* replied that the statutory benefits depended on insured earnings and not living conditions. Consequently, Article 16 of the Convention constituted an obstacle to ratification since it provided that the benefits paid after the initial period should, in combination with all the other benefits, guarantee healthy and reasonable living conditions according to national standards.

<sup>147</sup> Nevertheless, the Cypriot Workers' Confederation and the Pancyprian Federation of Labour wanted the Labour Advisory Board to re-examine the possibility of ratifying Convention No. 168.

<sup>148</sup> According to the Confederation of National Unions (CSN) serious thought should be given to the possibility of ratifying the Convention and its provisions should be analysed in-depth in order to ensure that they still adequately address its objectives.

<sup>149</sup> However, a new employment act is being drafted

<sup>150</sup> The Netherlands Federation of Unions considers however that the actual discrepancies should not prevent a regular examination of the possibility of ratifying Convention No. 168.

- 311.** Some States mentioned difficulties concerning the conditions for the award of unemployment benefits. In *Poland*, the obstacle related to the duration of the qualifying period. In *Argentina* and *Canada*, the waiting period was above the maximum accepted by the Convention. In *Bulgaria*, the waiting period was also longer than the maximum in the case of dismissals for reasons of discipline and for those who voluntarily left their employment. In addition, the laws of *Argentina*, *Canada*, the *Netherlands* and *Poland* were not in full conformity with the prescriptions of the Convention relative to the duration of benefits.
- 312.** Finally, *Canada* and *Slovenia* indicated that they did not rely on the criteria of Article 21, paragraph 2, of the Convention for the definition of the suitability of employment a refusal of which could cause the withdrawal, suspension or reduction of unemployment benefits.

#### *Equality of treatment*

- 313.** *Mexico* replied that it was not in a position to respect the principle of equality with regard to non-nationals given that it was not yet capable of providing the full range of benefits to its own nationals.

#### *Miscellaneous*

- 314.** Article 24 of Convention No. 168 prescribes that States shall endeavour to guarantee that the periods during which benefits are paid will be taken into consideration for acquisition of the right to old-age and survivors' benefit, medical care and sickness, maternity and family benefit. This provision was not implemented in *Argentina* and *Poland*. In addition, the legislation of *Poland* was not in accordance with Article 25 of the Convention related to the adjustment of statutory social security schemes based on occupational activity, to the occupational circumstances of part-time workers whose hours of work or earnings cannot be considered as negligible. Finally, in *Argentina*, the *Netherlands* and the *Czech Republic*, the representatives of protected persons and employers were not associated in an advisory capacity in the administration of the competent institutions, contrary to the provisions of Article 29, paragraph 1, of the Convention when the administration was directly ensured by a governmental department accountable to Parliament.

## 4. Remarks

- 315.** Among the **60** States which replied to the consultation regarding Convention No. 44, **six** were parties to this Convention and **five** others had ratified Convention No. 168.
- 316.** **Two** States, one of which was a party to Convention No. 44, planned to ratify Convention No. 168. In addition, the possibility of ratification could be examined shortly in **five** States, while there was no obstacle to ratification in **one** other State. In addition, **one** State requested technical assistance by the Office in this prospect. The answers of **11** States mentioned the need to conduct preliminary studies on the issues covered by Convention No. 168 or to conclude reforms of the social protection system.
- 317.** **Thirty-five** States mentioned the existence of obstacles preventing or delaying the ratification of Convention No. 168. For **ten** among them, the economic condition of the country did not permit the provisions stipulated in the Convention to be guaranteed while administrative obstacles existed in **five** States. **Twenty-four** States (three of which had also raised the existence of economic difficulties and one planned nevertheless to ratify the Convention in the future) described the inconsistencies between their legislation and the provisions of the Convention which prevented ratification of the latter. In certain cases, the social security system did not cover unemployment benefits at all.

- 318.** During the previous examination of Convention No. 44, the Governing Body had invited the States parties to this Convention to contemplate ratifying Convention No. 168 and inform the Office of any obstacles and difficulties encountered that might prevent or delay the ratification of this Convention. It had also deferred the decision to shelve Convention No. 44 until the Office had communicated to it the information requested on the ratification prospects of Convention No. 168.
- 319.** Although certain replies point towards the existence of ratification prospects for Convention No. 168, they seem somewhat less clear than for the other Conventions examined. A certain number of States thus underlined that their economic situation did not allow them to ratify and several among them answered that unemployment was not part of the contingencies covered by their social security system. In addition to this, the actual number of ratifications of this Convention is very low. However, the gradual implementation of a system of unemployment benefits in the States concerned should progress together with economic development. Even if the number of ratifications of Convention No. 168 is not likely to increase very quickly in the coming years, its provisions remain relevant and constitute a more or less long-term objective depending on the circumstances which prevail in each country.
- 320.** Convention No. 44 is closed to ratification since its revision by Convention No. 168. It should also be mentioned that among the 12 States parties to this Convention,<sup>151</sup> six ratified Convention No. 102 and accepted its Part IV on unemployment benefit. Under these circumstances, the shelving of Convention No. 44 could be envisaged.
- 321.** The Working Party could propose to invite the States parties to Convention No. 44 to contemplate ratifying Convention No. 168, the ratification of which would, ipso jure, involve the immediate denunciation of Convention No. 44. It could also propose the shelving of Convention No. 44.

## VI. Remarks concerning Convention No. 102

- 322.** Of the **79** States which responded to the Office consultations regarding Convention No. 102, **24** had already ratified the Convention and **three** others could do so shortly. Furthermore, **four** States responded that they did not meet any obstacles in this respect. **Ten** other States considered that they should first proceed with certain reforms in their legislation or carry out in depth studies on the issues which were the object of Convention No. 102 before deciding upon the question of its ratification.
- 323.** **Thirty-eight** States mentioned the existence of obstacles to the ratification of this Convention. These comments are summarized below, with respect to each branch. The total number of replies mentioned below is above 38, since the same State could have mentioned the existence of different types of obstacles for several parts of Convention No. 102.
- 324.** **Eight** of these States met economic or administrative obstacles. **Seven** States considered that the concepts on which the Convention relied were outdated and **one** State expressed its preference for the more recent Conventions which it had ratified.
- 325.** **One** other State considered that to the extent allowed by the situation of a country, it would be better to ratify the third-generation Conventions. **One** State referred to the age of the

<sup>151</sup> *Cyprus, France, Ireland, Netherlands, Spain and the United Kingdom.*

Convention as an obstacle to its ratification, while **one** other State considered that its philosophy in the area of social security did not correspond to that of the Convention. Finally, **one** State indicated that it did not plan to ratify Convention No. 102, although its legislation was in line with its provisions.

- 326.** In addition, **30** States considered that their legislation was not in conformity with the provisions of Convention No. 102. The obstacles raised related in certain cases to the Convention in general, while in other cases they concerned one or several of the contingencies covered therein.
- 327.** **Nine** States responded in general that inconsistencies existed between their legislation and Convention No. 102. These difficulties related in particular to the number of persons protected and the conditions for securing entitlement. For **two** of them, however, the adoption of draft Bills which were in the process of examination could lead to the overcoming of the obstacles observed. One of them requested technical assistance of the Office, in particular for the establishment of statistical data.

*Medical care*

- 328.** **Nine** States made specific comments on Part II of Convention No. 102. None of them seemed to fully apply the provisions of this part. **One** of these States replied that its legislation was in part consistent with these provisions. The legislation of **two** others did not cover this contingency. In **five** States the personal coverage did not correspond to the provisions of the Convention. Finally, for **one** State, the difficulty related to the duration of the benefits.

*Sickness benefits*

- 329.** **Nine** States communicated information relative to Part III of Convention No. 102. **One** of them responded that its legislation was based on these provisions. **One** other that had ratified Convention No. 102, had eliminated the obstacles to the acceptance of the obligations of the Convention for this contingency but had not yet been able to decide on the issue of its acceptance. **One** other should examine whether its legislation was in conformity with the provisions on the number of protected persons. **Six** States had considered that the acceptance of Part III of the Convention would meet obstacles. The difficulties listed included the absence of legislation on the payment of sickness benefit, the number of protected persons, the waiting period and the duration of the benefit.

*Old-age benefit*

- 330.** The answers of **seven** States contained indications relative to old-age benefits. **One** State, that did not plan to ratify the Convention, indicated that its legislation was in conformity with the provisions of Part V of Convention No. 102. **One** other indicated that even though it had not ratified the Convention yet, it ensured the provision of old-age benefit. **Five** States noted the existence of obstacles to the implementation of this part of the Convention. The retiring age, the method of determination of the rate of the benefit and the revision of the amount following substantial changes in the cost of living were mentioned as obstacles.

*Invalidity benefit*

- 331.** **Ten** States communicated observations concerning invalidity benefit. **One** State responded that its legislation provided for the award of such benefits, even though it had not yet ratified Convention No. 102. **One** other considered that the provisions of Part IX of the Convention were implemented in part. **Eight** States, two of which had ratified Convention

No. 102, encountered difficulties in the implementation of its provisions. In half of these cases, the obstacles concerned the duration of the qualifying period. The coverage of invalidity which did not originate in work, the duration of benefits and the revision of the amount of the latter were also mentioned.

*Survivors' benefit*

- 332.** **Nine** replies contained information on the subject of invalidity benefit. **One** State, which did not plan to ratify the Convention, considered that its legislation was in line with the provisions of Part X of the Convention. **One** other replied that it had not ratified Convention No. 102 yet, but its legislation covered the survivors' benefit. The legislation of **one** other State corresponded in part to the requirements of this part of Convention No. 102. **Six** States, one of which had ratified the Convention, encountered obstacles in its application. The points raised concerned the conditions for securing the benefit, the rate of benefit and the revision of the latter following changes in the cost of living.

*Employment injury benefit*

- 333.** **Eleven** States formulated comments concerning the application of the provisions of Part VI of Convention No. 102. The legislation of **one** State was in conformity with the provisions of this part, even though it did not consider that ratification of the Convention would be appropriate. **One** State replied that its legislation covered this contingency, while the legislation of **one** other respected in part the provisions of the Convention relative to benefit in case of industrial accidents and occupational diseases. **Two** States that had ratified Convention No. 102 seemed to be in the process of eliminating the obstacles to the implementation of Part VI but one of them had not yet had the opportunity to examine in depth the question of the acceptance of the Convention. **Six** States mentioned obstacles to the application of the corresponding provisions of the Convention. In one case, the difficulties mentioned were of an administrative nature. In the other cases, they concerned in particular the number of protected persons, the conditions for the award of benefit as well as the amount and duration of payment of the latter.

*Unemployment benefit*

- 334.** The answers of **22** States to the consultation contained indications on the application of Part IV of Convention No. 102. **One** State party to Convention No. 102 indicated that it was in a position to accept this part. The **21** other replies mentioned obstacles to the application of its provisions. The legislation of **nine** States did not cover this contingency and two others ensured the award of unemployment benefit only in certain cases. For **one** State, the obstacle was of an administrative nature. The other observations related to the personal coverage, the conditions for securing the benefit and the amount of the latter.
- 335.** In summary, in most cases, the obstacles mentioned concerned in particular one or several branches of social security. It should be recalled in this respect that one of the flexibility clauses of Convention No. 102 concerns the modalities of its ratification. This requires the acceptance of the obligations of the Convention with respect to only three out of nine contingencies covered therein. Certain States that indicated the existence of obstacles to the implementation of the provisions of one or the other part of the Convention would seem to be in a position to ratify the Convention if they excluded the application of certain parts. In general, the replies to the consultation did not contain comments on the reasons for the limited recourse to the flexibility clauses of Convention No. 102. The Office could send supplementary information to member States on the different aspects of these flexibility clauses.

- 336.** The ratification of Convention No. 102 allows States to pass progressively, and if the national situation allows it, to the implementation of the third-generation Conventions. Indeed, if a State party to Convention No. 102 ratifies one of these Conventions, the provisions of the corresponding part of Convention No. 102 cease to be applicable to this State from the date of entry into force of the more recent Convention vis-à-vis this State (Article 75 of Convention No. 102). It should be also recalled that the family benefit does not constitute the subject of any third-generation instrument. The ratification of Convention No. 102 remains therefore relevant in any case with respect to this contingency.
- 337.** Pursuant to the examination of Convention No. 102 in November 1997, the Working Party drew the attention of the Governing Body on the importance that it attached to the questions covered by this Convention. The Governing Body invited member States to inform the Office of obstacles and difficulties encountered that might prevent or delay the ratification of Convention No. 102 and of the reasons for the limited recourse to the flexibility clauses that it contains. In addition, the Governing Body decided that the Working Party would re-examine the situation of the Convention including the possible need for its total or partial revision, in the light of the information available.<sup>152</sup>
- 338.** The only objections formulated by certain States with respect to the content itself of the Convention seemed to relate to the use of certain concepts, like the standard beneficiary, the skilled manual male employee or the ordinary adult male labourer. As seen above (paragraph 30), these concepts are used with the purpose of comparison on the basis of statistical data and member States are not required to introduce these concepts in their legislation. In reality it would seem useful that the Office elaborated and disseminated documents with information on the scope of the provisions of Convention No. 102, and especially on the methods for the determination of the rate of benefit. This observation seems equally relevant for the other instruments which are the object of this consultation. Proposals to this effect are found below.
- 339.** In the light of the above observations, the provisions of Convention No. 102 seem to retain their relevance and the Governing Body could promote the ratification of this Convention. Of course, the Office is ready to provide the necessary technical assistance to allow member States to overcome the obstacles that they encounter in this respect.
- 340.** The Working Party could propose to invite member States to contemplate ratifying Convention No. 102.

## **VII. Proposals concerning the instruments examined**

- 341.** The considerations above demonstrate that ILO Conventions and Recommendations on social security play an essential role in the general context of social protection for workers and the population in general. One must however recognize that these instruments are generally complex. This is particularly true of Conventions Nos. 118 and 157, given their subject matter. As regards the other Conventions, the provisions concerning the calculation of the rate of benefits, to quote only one example, are relatively difficult to understand. The Office could develop new information tools, for instance information booklets that would be sent to all constituents. As seen above, in some instances technical assistance

<sup>152</sup> Documents GB.270/9/2 and GB.270/LILS/WP/PRS/2.

would also appear useful for the elimination of obstacles to the implementation of social security Conventions and Recommendations.

**342.** It should be reminded in that respect that, following the general discussion on “Social security: Issues, challenges and prospects”, the Conference concluded that:

- a major campaign should be launched in order to promote the extension of coverage of social security;
- the ILO should call on governments to give the issue of social security a higher priority and offer technical assistance in appropriate cases;
- the ILO should advise governments and the social partners on the formulation of a national social security strategy and ways to implement it;
- the ILO should collect and disseminate examples of best practice.<sup>153</sup>

**343.** The proposals that follow take the Conference conclusions into consideration.

## **1. Social Security (Minimum Standards) Convention, 1952 (No. 102)**

**344.** The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Social Security (Minimum Standards) Convention, 1952 (No. 102);
- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 102, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th session (June 2001) of the Conference.

## **2. Equality of Treatment (Social Security) Convention, 1962 (No. 118)**

**345.** The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Equality of Treatment (Social Security) Convention, 1962 (No. 118);
- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 118, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

<sup>153</sup> *Record of Proceedings*, ILC, 89th Session (June 2001), Geneva, No. 16, p. 36.

---

**3. Maintenance of Social Security Rights Convention, 1982 (No. 157) – Maintenance of Social Security Rights Recommendation, 1983 (No. 167)**

346. The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Maintenance of Social Security Rights Convention, 1982 (No. 157), and giving effect to the Maintenance of Social Security Rights Recommendation, 1983 (No. 167);
- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 157 and Recommendation No. 167, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

**4. Medical Care and Sickness Benefits Convention, 1969 (No. 130), and Recommendation (No. 134)**

347. The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and giving effect to the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134);
- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 130 and Recommendation No. 134, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

**5. Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and Recommendation (No. 131)**

348. The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and giving effect to the Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131);
- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 128 and Recommendation No. 131, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

**6. Employment Injury Benefits Convention, 1964 (No. 121)**

349. The Working Party could recommend to the Governing Body:

- (a) that it invite the Member States to contemplate ratifying the Employment Injury Benefits Convention, 1964 (No. 121);

- (b) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 121, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

**7. Unemployment Provision Convention,  
1934 (No. 44)**

**350.** The Working Party could recommend to the Governing Body:

- (a) that it invite the States parties to the Unemployment Provision Convention, 1934 (No. 44) to contemplate ratifying the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
- (b) to shelve Convention No. 44 with immediate effect;
- (c) that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 168, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.

**351.** *The Working Party is invited to examine the proposals listed in paragraphs 344 to 350 above and to present its recommendations to the Committee on Legal Issues and International Labour Standards.*

Geneva, 22 October 2001.

*Point for decision:* Paragraph 351.