Social Security Issues: Fiftieth International Labor Conference

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ONE OF THE MAJOR ITEMS on the agenda of the Fiftieth International Labor Conference, held in Geneva from June 1 to June 23, 1966, was to undertake the revision of six conventions adopted by the Conference in 1933 on old-age, invalidity, and survivors insurance in nonagricultural and agricultural occupations:

No. 35 Old-Age Insurance (Industry, etc.)
No. 36 Old-Age Insurance (Agriculture)
No. 37 Invalidity Insurance (Industry, etc.)
No. 38 Invalidity Insurance (Agriculture)
No. 39 Survivors Insurance (Industry, etc.)
No. 40 Survivors Insurance (Agriculture)

The present article reviews the background leading up to this undertaking at the Conference and gives some insight into its results. Attention is directed particularly to the role played by the United States Government and the significance of the results of the Conference for the United States.

THE INTERNATIONAL LABOR CONFERENCE

The International Labor Conference is the deliberative body of the International Labor Organization (ILO). The ILO was established in 1919 as a specialized agency of the League of Nations to deal with questions affecting the welfare of workers, and was reconstituted after World War II to carry out the same role in the United Nations. The Secretariat of the ILO and of the Conferences is the International Labor Office which has its headquarters in Geneva, Switzerland. The Constitution of the ILO requires that the Conference meet at least once each year, and it has met annually beginning with 1919 except in 1926, 1946, and 1958 when it met twice, in 1936 when it met three times, and in 1940–43 when it did not meet at all because of the war.

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Attendance at the International Labor Conference with the right to vote is open to all member countries of the ILO. The membership of ILO now numbers 115. The United States was admitted to membership in 1934.

Delegations of member countries attending a Conference ordinarily include 4 voting delegates. Two of these represent the Government, and one each represents the employers and the workers of the country.[1] Generally, the number of Government delegates entitled to vote at Plenary Sessions of the Conference are therefore about equal to the combined total of voting Employer and Worker delegates.[2] Voting in technical committees of the Conference differs from voting in the Plenary Sessions as explained below.

The purpose of the Conference is to discuss all facets of the work of ILO in the broad field of labor and management relations, including social security.[3] Its actions are based on proposals of various sorts made by the Director-General of the ILO, by the ILO Governing Body and its various Committees, and by the membership. One of the major functions of the Conference is to develop international standards on various labor matters by means of international Conventions and Recommendations.

[1] At the 50th International Labor Conference, the United States Government delegates were the Honorable George L. P. Weaver, Assistant Secretary of Labor for International Labor Affairs, and the Honorable George P. Delaney, Special Assistant to the Secretary of State and Coordinator of International Labor Affairs; the Employer delegate was Edwin P. Neilan, Chairman of the Board and President, Bank of Delaware; and the Worker delegate was Rudolph Faupl, International Representative, International Association of Machinists and Aerospace Workers.

[2] The 50th Conference had official representations from 106 member countries. There were 208 voting Government delegates (four Governments accredited only one delegate), 102 Employer delegates, and 104 Worker delegates with 102 permitted to vote (two Members sent neither Employer nor Worker delegates, and two Members sent only Worker delegates).

[3] For a general discussion of the work of ILO in the social security field see William Yoffee, "International Social Security Organizations: United States Participation," *Social Security Bulletin*, September 1964.

SIGNIFICANCE OF ILO INSTRUMENTS

Two types of instruments are employed by the ILO in devising international labor standards—Conventions and Recommendations. Ratification of an ILO Convention by a Member country obligates the Member to meet or exceed the standards established by the Convention in its laws and regulations and to continue to do so as long as the Convention remains in force, or until the Member renounces its commitment. A Recommendation is not open to ratification but rather, as the name implies, makes suggestions and gives advice for future action by all Members.[4]

The ILO's approach to the development of international standards through the adoption of Conventions and Recommendations is highly pragmatic as a result of ILO's tripartite composition. In each Conference Committee there is equal voting strength for the employers, the workers, each representing their particular viewpoints, and the Governments who tend to advocate existing national practices. In addition, before the consideration of a proposed instrument by a Conference, the subject matter is usually reviewed by a highly qualified select committee of international experts whose technical recommendations are taken into consideration.

ILO Member countries assume certain obligations with respect to the Conventions and Recommendations under Articles 19, 22, and 23 of the ILO Constitution. Under Article 19, a Convention must be communicated to all Members for ratification,[5] and a Recommendation must be communicated to all Members with a view to seeing that effect is given to it by national legislation or otherwise. Each Member is obligated to bring each instrument to the attention of its competent authority for the enactment of legislation or other action within 18 months after the close of the Conference that adopted it. Whether or not the competent authority of the Member country acts, the Member must inform the ILO of the action taken and, upon later request, must also report what is being done to give effect to the instruments. If the Member ratifies a Convention, it must, under Article 22, report annually to the ILO on the measures taken to give the instrument effect, and a summary of these reports must, under Article 23, be presented to each Conference.

DOUBLE DISCUSSION PROCEDURE

The International Labor Conference ordinarily follows a double discussion procedure for proposed Conventions and Recommendations. As a practical matter, this requires that the ILO Governing Body fix the agenda of a Conference about 2 years in advance. The ILO staff then prepares a preliminary report describing the law and practice in different countries and any other useful information on the question to be discussed and submits, as part of the report, a questionnaire directed to Member Governments on the kinds of provisions that might be included in proposed instruments. The preliminary report must be dispatched to the Governments at least 1 year before the opening of the Conference at which the first discussion is scheduled to take place.

On the basis of the replies of the Governments to the questionnaire, the ILO staff prepares a second report indicating the attitude of the Governments toward various questions and stating the conclusions of the staff as to the consensus. These conclusions form the basis for the Governments to prepare the positions they will take at the Conference.

Following the discussions of the Committee established by the First Conference to deal with the question, the adoption by the Conference of this Committee's report, and the adoption of a resolution to bring the question up for a second discussion, the ILO staff prepares a third report based on the previously expressed views of the Governments and on the Committee's report. This third report, which contains preliminary texts of draft instruments, is sent to the Governments for comment. Then, the staff prepares a final report containing the texts of the draft instruments, with any amendments made necessary by the comments.

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[4] ILO Conventions are treated by the United States as international treaties. When action on a particular Convention is deemed appropriate it is referred with or without recommendation for ratification by the President to the Senate for its advice and consent. Recommendations are merely referred to appropriate authorities (e.g. Cabinet officers, or State Governors) for appropriate action, as required by the ILO Constitution.

[5] Thus far, the United States has ratified seven ILO Conventions (Nos. 53, 54, 55, 57, 58, 74, and 80), of which six deal with various aspects of maritime work and one revises certain earlier Conventions in a number of technical respects. Conventions 35 to 40 were adopted the year before the United States entry into the ILO and have not been submitted to the U. S. Senate for ratification.

At the second Conference, the texts of the draft instruments are fully discussed in committee and may also be fully discussed at a Plenary Session of the Conference. They are open to amendment at either stage. Finally, on a roll call vote in the Plenary Session, the instruments are either adopted or rejected. A majority of two-thirds of the delegates present is required for adoption.

HISTORY OF ILO INSTRUMENTS ON SOCIAL SECURITY

The ILO is the specialized United Nations agency with primary responsibility for the establishment of international standards in the social security field. This responsibility is expressed in detail in the Preamble of the ILO Constitution and in Article III(f) of the Declaration concerning the Aims and Purposes of the ILO, which is annexed to the Constitution. The modern components of social security were first enumerated in the Income Security Recommendation adopted by the International Labor Conference in 1944[6] and were revised by the Minimum Standards of Social Security Convention adopted by the Conference in 1952.[7] These components are: Medical Care, Cash Sickness Benefits, Unemployment Benefits, Old-Age Benefits, Employment-Injury Benefits, Family Allowances, Maternity Benefits, Invalidity Benefits and Survivor Benefits.

Before World War II, the Conference adopted a number of Conventions and Recommendations[8] on various types of social risks connected with employment. Nearly all envision or include provisions for some kind of social benefit.

During World War II, no Conventions were adopted. In 1944, however, the Conference adopted three Recommendations dealing with social security: No. 67, Income Security; No. 68, Social Security (Armed Forces); and No. 69, Medical Care. The Income Security Recommendation has had a marked impact since it was the first major international instrument to view social security as an integrated whole made up of various programs formerly treated separately.

The most significant achievement of the Conference on social security in the postwar years was the adoption in 1952 of Convention No. 102, Minimum Standards of Social Security, which has become the touchstone of international action in the field. Following World War II, and before 1952 when it also adopted a revised Convention on maternity protection (No. 103), the Conference had adopted two Conventions (Nos. 70 and 71) and two Recommendations (Nos. 75 and 76) dealing with social security for seamen. In 1962, the Conference adopted Convention No. 118, Equality of Treatment (Social Security) for migrant workers.

Early in 1959, the Committee of Social Security Experts of the ILO was convened in Geneva. One of its main topics of discussion was the possibility of revising the prewar Conventions on social security. The Committee's report to the Governing Body of the ILO stated in this regard that the "prewar social security Conventions as a whole do not correspond to the evolution that has taken place in many social security systems," and that it was necessary therefore to adapt the former instruments "to the new concept of social security."

The Director-General of the ILO later proposed that the revision of the prewar Conventions on social security be carried out in successive stages as follows: (1) instruments relating to benefits in case of employment accidents and occupational diseases; (2) instruments relating to old-age, invalidity, and survivor pensions; (3) instruments relating to sickness benefits; and (4) instruments relating to unemployment benefits.

The first stage of this schedule was begun with advance preparations for the Conference in 1963 and culminated with the adoption of the Employ-

[6] Wilbur J. Cohen and Jessica H. Barr, "The 1944 International Labor Conference," *Social Security Bulletin*, June 1944.

[7] Robert J. Myers, "New International Conventions on Social Security," *Social Security Bulletin*, October 1951; Robert J. Myers, "Minimum Standards of Social Security: New International Convention," *Social Security Bulletin*, October 1952.

[8] Of these, three Conventions (Nos. 2, 8, and 44) and four Recommendations (Nos. 1, 10, 11, and 44) deal with unemployment; four Conventions (Nos. 12, 17, 18, and 42) and four Recommendations (Nos. 22 to 25) deal with employment injury and occupational disease compensation; one Convention (No. 3) and one Recommendation (No. 12) deal with maternity protection; three Conventions (Nos. 24, 25, and 56) and one Recommendation (No. 29) deal with sickness benefits; one Recommendation (No. 43) and six Conventions deal with old-age (Nos. 35 and 36), invalidity (Nos. 37 and 38), and survivors (Nos. 39 and 40) insurance. Only one brief prewar Recommendation (No. 17) applied the all-encompassing idea of social insurance (that is "systems of insurance against sickness, invalidity, old-age and other similar social risks") to agricultural workers.

ment-Injury Benefits Convention (No. 121) and Recommendation (No. 121) at the Conference in 1964. The 1966 Conference and preparations for it represent the beginning of the second stage, which will culminate, it is expected, with the adoption of instruments on old-age, invalidity, and survivors insurance at the 1967 Conference. The third stage relating to sickness benefits is to begin with preparations for the 1968 Conference.

ASSIGNMENT OF THE COMMITTEE

The Social Security Committee established by the 50th International Labor Conference in 1966 was originally composed of 72 Government Members, 42 Worker Members and 22 Employer Members.[9] During the course of the meeting, the composition was changed so that finally there were 24 Employer Members and 30 Worker Members. The votes of Committee members are always computed so that each group has the same number of votes.

The basis for the Committee discussions was the conclusions set forth by the ILO staff in Report V(2).[10]

AIM OF THE REVISION

The first major question discussed by the Committee was the aim of the revision of the prewar Conventions.

The United States Government took the lead in proposing that the revised instruments should supplement, rather than merely restate, the minimum standards contained in Convention No. 102, because otherwise this effort would be pointless. The United States Government also contended that while Convention No. 102 was a good instrument, it contained a number of minor provisions that restricted its flexibility so that countries with excellent social security systems—some going well beyond the minimum standards provided in Convention No. 102—could not ratify because their systems did not conform in every detail.[11]

The aim of formulating an excellent model scheme while eliminating minor technical provisions, adding flexibility without watering down major requirements, and giving consideration to national systems whose schemes exceed minimum standards was at the core of the United States Government position on most of the subsequent points that were discussed. On a good many points the United States Government also tried to have the standards in the new instruments raised in comparison with those in Convention No. 102.

The Workers Group also took the position that the standards in the new instruments should be higher than those in Convention No. 102. It pointed to the Employment Injury Convention No. 121 as an excellent example of how this could be accomplished.

The Employers Group, on the other hand, indicated that it would not be prepared to go beyond the standards of Conventions No. 102 and No. 121. It believed that, though some improvement in the provisions of Convention 102 should be possible, going beyond them would lead to the same limited ratification of the new instrument that followed the adoption of Convention No. 102 (only 16 country ratifications to date).

Only two Governments spoke in favor of developing new instruments with standards close to those of Convention No. 102. All the others that spoke to the question, including both developed and less developed countries from every region of the world, expressed the view that the new instruments should advance beyond minimum standards.

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[9] The U. S. representatives were Robert J. Myers, Chief Actuary, Social Security Administration (with the coauthor of this article as his substitute) for the Government; Edwin P. Neilan, Chairman of the Board and President, Bank of Delaware (with Robert S. Lane, Counsel, Mobil Oil Corporation, who actually attended as his substitute) for the Employers; Mr. Rudolph Faupl, International Representative, International Association of Machinists and Aerospace Workers (with Matthew Guinan, President, Transport Workers' Union of America as his substitute) for the Workers. The U. S. Worker representative did not attend the meetings of the Committee.

[10] Report V(2): Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors Pension, ILO Conference, 50th Session, 1966 (ILO 1966).

[11] Convention No. 102 was transmitted by the President to the U. S. Senate for its advice and consent on May 28, 1954. An accompanying letter from the Secretary of Labor indicated that it was not appropriate for ratification because at that time Federal legislation was in compliance with only two branches of social security in the Convention—old-age insurance and survivors insurance—rather than three as required. Subsequently cash disability benefit provisions have been included in Federal legislation, but it is anticipated that these will be at variance with the invalidity branch of the Convention in minor respects for disabilities occurring after 1971.

It should be recalled at this point that in a 1962 report, the ILO Committee of Social Security Experts generally agreed that any new instrument on old-age, invalidity and survivors insurance should contain standards not lower than those of the prewar instruments, which on the whole are more favorable and are not less favorable than those contained in Convention No. 102. Several of the experts, however, cautioned then that it would be unwise to insist on higher standards in all respects. The Committee of Experts also espoused the principle of flexibility as opposed to the inclusion of detailed provisions such as those concerning means for and methods of providing pensions, or rigid mathematical standards.

THE FORM OF THE REVISED INSTRUMENTS

There was considerable diversity in the replies of the Governments to the questionnaire developed by the ILO staff and included in Report V(1)[12] on the issue of what form the revised instruments should eventually take. Fundamentally, there was a choice between one or several Conventions supplemented by one or several Recommendations, but the underlying issue seemed to be whether separate ratification of any Convention(s) would be possible by pension branch (old-age, invalidity, or survivor pensions) and by occupational sector (nonagricultural or agricultural occupations). Most Governments, in their replies to the questionnaire, indicated a desire to make separate ratification a possibility. Most Governments also agreed on the desirability of having one or more supplementary Recommendations, though they differed on what should be contained in them. The conclusions proposed in Report V(2) were to the effect that a single Convention should emerge, with provision for separate ratification by pension branch and occupational sector and supplementation by a single Recommendation.

The Committee decided to formulate a single Convention supplemented by a single Recommendation. The idea of separate ratification of the Convention by pension branch was generally accepted, but considerable controversy arose over the question of separate ratification by occupational sector.

[12] Report V(1): Revision of Conventions Nos. 35, 36, 37, 38, 39, and 40 concerning Old-Age, Invalidity and Survivors' Pensions, International Labor Conference, 50th Session 1966 (ILO 1965).

SEPARATE RADIFICATION AND COVERAGE OF AGRICULTURAL SECTOR

The first major difference of opinion was triggered by the question of whether Governments should be permitted to ratify the Convention separately for nonagricultural and agricultural sectors. Because of the widespread practice by a number of national social security schemes of treating agricultural workers separately from other workers (and usually providing them with inferior protection or no protection at all), the underlying question for some Members was whether countries would have to give their agricultural workers equal protection in order to ratify the Convention. This issue carried over onto a number of related points.

Several amendments, including one proposed by the United States Government, sought to eliminate the possibility of ratification by occupational sector and thus to prevent the possibility of different treatment for nonagricultural and agricultural workers by ratifying countries. The United States Government contended that social justice requires that there be no discrimination between different kinds of workers as regards their social security protection. It was noted in the discussion that Convention No. 121 had dropped the distinction between agricultural and other workers with respect to employment injury protection.

The main opposing arguments were that, for some countries, particularly the less developed, coverage of agricultural workers would be a difficult administrative problem and that, if separate ratification for the agricultural sector did not remain a possibility, the proposed Convention would not receive many ratifications.

In rebuttal, it was pointed out that (1) Convention No. 102 also did not make a distinction between agricultural and nonagricultural workers, (2) under the proposed conclusions, the less-developed countries would not suffer from this change since they could ratify temporarily by extending coverage either to 25 percent of all employees in both sectors or to 50 percent of all employees in industrial undertakings, and (3) the developed countries would have a choice of covering all employees, covering 50 percent (later raised to 75 percent) of the economically active population, or covering all residents under a means test.

OTHER PRELIMINARY POINTS

The provision that permits less developed countries to ratify under the temporary exceptions just described is a type of special exception clearly envisaged by Article 19(3) of the ILO Constitution. A change in this provision brought it into line with similar exceptions in Conventions No. 102 and No. 121. It requires that countries availing themselves of the exception periodically report that their reasons for doing so still exist or that they are renouncing the right to do so as of a certain date. Another added requirement provides that countries availing themselves of the exceptions state their reasons for doing so and expressly undertake to extend protection under their systems as circumstances permit.

Three alternatives relating to the extent of protection were proposed as a basis for normal ratification: (a) protection of all employees (with certain specific exceptions and excluding a residual category of no more than 10 percent of the protected group); (b) protection of at least 50 percent of the economically active population (employees and self-employed); or (c) all residents with or without a means test. The United States Government joined in taking the lead to have the percentage in (b) raised to 75 percent. Opposition to this arose on the grounds that such a change would make ratification a practical possibility for only a privileged minority of developed countries. The ILO staff indicated that the purpose behind the 50-percent figure was to make possible ratification by developing countries with long traditions of social security. Some Committee members expressed the view that use of the 50-percent figure would make it possible for a developed country to exclude the agricultural sector. The United States Government argued that if a developed country could not meet the qualifications of protecting virtually all of its employees or all of its residents, then it would be inconsistent to permit it to ratify on the basis of only 50 percent of its economically active population. The change was adopted, but there is sufficient concern over this issue to assure that it will be raised again next year.

ORGANIZATION OF THE CONVENTION

The conclusions that served as a basis for the Committee's discussion were organized as follows: A. Persons to be Protected (which, in the discussion, became intimately tied to the preliminary points on general form and content, already noted); B. Contingencies to be Covered; C. Qualifying Conditions; D. Pensions to be Provided; E. Legal, Administrative, and Financial Safeguards; and F. Final Provisions.

Persons To Be Protected

The most controversial questions in regard to persons to be protected have already been mentioned. A number of other questions on some of these points, however, also merit mention.

The conclusions allowed for the possibility of excluding seafarers (including sea fishermen) and public servants from the category of protected persons under the national system that serves as a basis for ratification, provided they are protected by special systems equivalent in the aggregate. Many precedents for treating both categories under separate schemes exist including a provision in Convention No. 102 and Convention No. 70 (Social Security (Seafarers)), but there was some objection to singling them out for special mention in the Convention on two grounds: first, that this implies discrimination and, second, that it is unnecessary since the terms of the exclusion requires that they be treated at least as well as other workers in any event. A proposal to broaden the terms of this Point to permit any special exceptions on the same conditions of equal treatment, without mentioning specific groups, was withdrawn when it failed to gain support.

The conclusions were designed to permit a Member who ratifies on the basis of protecting all employees to exclude certain marginal categories where there might be severe administrative difficulties in locating them or determining their status, or where the individual might not gain any advantage from being protected. Originally, specific exclusions were provided for persons in casual employment, members of the employer's family living in his house, outworkers (sometimes called homeworkers), persons too old to be protected when they first entered employment, and a residual category no more than 10 percent of the employees protected. Eventually, the family employment exclusion was limited to unpaid family employment. Some members, including the United States Government, considered that this would

negate the exclusion and open the way for uncontrollable abuse. The exclusions for outworkers and workers too old to be protected when they first entered employment were eliminated.

Contingencies To Be Covered

The points in this part dealt generally with the following matters: definition of invalidity, retirement age, persons with rights to a survivor pension (and under what conditions), and conditions for reduction or suspension of pension payments.

Definition of invalidity.—The definition of invalidity proposed in the conclusions was in general like the definition of disability in the Social Security Act before the 1965 amendments, or at least broad enough to encompass that definition, with one exception—the proposed definition tied permanent invalidity to, and defined it as an extension of, a temporary or initial incapacity for which a benefit is payable.

The United States joined in offering an amendment to make invalidity an extension of a temporary or initial incapacity, whether or not a temporary benefit was payable initially, to provide for those systems that do not pay temporary benefits. Some amendments would have narrowed the concept of invalidity so that no gainful activity would be possible or they would limit it to nonwork-connected causes; others would have broadened it to include partial incapacity or occupational disability.

A subcommittee of those who had proposed amendments was formed to agree on a definition acceptable to the Committee. The definition agreed on by the subcommittee, and the one that was subsequently adopted by the Committee, defined invalidity "as incapacity to engage in any gainful activity to an extent prescribed by national legislation, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity." The adopted text differs from the original text in that it permits invalidity to be defined as 100-percent incapacity and it eliminates the tie-in with temporary disability benefits.

Retirement age.—The conclusions did not provide for a fixed retirement age but suggested age 65 as the maximum, unless a higher age could be justified statistically on the basis of prevailing national conditions. An amendment leaving the determination of retirement age completely up to each member and suggesting no maximum was defeated. An amendment fixing the retirement ages at 65 for men and at 60 for women was revised, when it became apparent that there was no general support for fixed retirement ages, to establish the principle of a lower retirement age for women than for men. This amendment was also defeated.

The main support for the principle of lower retirement age for women was based on the argument that women are subject to great strain and sometimes carry on occupations simultaneously with housekeeping and child rearing. The main opposition was based on the contentions that women generally live longer than men and that a lower retirement age is discrimination which might ultimately work to the detriment of women who would like to continue working as long as they are able. The United States Government indicated that while it would have agreed to a fixed retirement age lower than 65 for both men and women, it was opposed to any discrimination on the basis of sex. This amendment was defeated.

In considering the conclusion that retirement age should be lower for persons in arduous or unhealthy occupations, most members of the Committee recognized that such occupations exist and deserve special treatment. But they questioned whether such occupations could be defined adequately enough by national legislation to justify making such special treatment mandatory under the Convention and whether this treatment could not be taken care of adequately by industry arrangements. There was strong support for deleting this provision altogether, and a move to this end failed by a narrow margin. Subsequently, in a move jointly led by the United States Government, it was transferred to the Recommendation.

Qualifications for survivor pensions.—The conclusions proposed that survivor pensions be paid to widows and children, as prescribed by national legislation. They provided that a widow should qualify at least if she is deemed incapable of self-support—that is, if she has reached pensionable age, is disabled, or is caring for a child survivor, and, if she is childless, her marriage had lasted for a prescribed period or was contracted before her husband reached a prescribed age or had become disabled. The conclusions also provided

that a child should qualify at least if he is under school-leaving age or age 15 (whichever is lower), or a higher age if he is a student or disabled. The propriety of adding the qualification "as prescribed by national legislation" to the categories was questioned on the grounds that it would leave the Members free to ignore any other conditions that appears to limit their freedom to discriminate. The Committee generally agreed that Members should not be free to ignore the additional qualifications listed but was unwilling to alter the quoted phrase to make it more restrictive.

The category of disabled dependent widowers was added to the other categories of eligible survivors, paralleling Convention No. 121. The United States Government opposed this as well as the retention of the category of disabled widows, because protection of these categories is not a matter of basic principle and their inclusion only tends to encumber a Convention with details of minor numerical significance.

The only other significant change in the text on these points eliminated the requirement that a childless widow must be married before her husband reached a specified age or became an invalid to qualify for a widow's benefit. There seemed to be some understanding by the Workers Group that this change was intended to assure that all childless widows, regardless of age or capacity for self support, would receive a benefit if their marriages had lasted for a minimum period. The Committee rejected this interpretation.

The United States questioned whether the language of the conclusions intends that, to qualify for a widow's pension, a woman must meet all the other qualifying conditions at the time she becomes a widow or whether she could qualify later if she met the other conditions after she became a widow. The ILO staff indicated that it was intended that, for the widow to be assured of benefits, all conditions should be met simultaneously. The United States Government joined other members in opposing this interpretation. The supporters of the ILO staff view, however, opposed any interpretation that would permit a woman widowed at, say, age 22 to qualify for a benefit at age 65. The United States Government maintained that this was extremely unlikely since such a woman would probably either remarry or qualify for a worker's benefit on her own account in the meantime. The interpretation that the widow could qualify if she met the other qualifying conditions after she became a widow, jointly supported by the United States Government, was eventually adopted by the Committee.

The United States Government also pointed out two problems inherent in these provisions. First, by requiring payment of a pension to a widow who is caring for a child of the deceased without putting any limit on the child's age, they discourage Members from extending the period during which the children may continue to receive pensions unless the Member is prepared to pay the widows for a longer period.[13] Second, by permitting Members to place any higher age limit on payment of pensions to children who are disabled beyond age 15 or beyond normal school-leaving age, they allow the Members to meet the requirement equally whether at one extreme they pay only 1 day longer or at the other extreme they pay until the disability ceases. The Committee did not take a stand on either of these questions.

Reductions and suspensions.—Only one major change resulted from the discussion on the question of reduction and suspension of pensions because of earnings. The principle was added, in the case of reductions, that the reduction should always be less than the earnings. This principle is in accord with the effect of the earnings test under OASDHI. Some controversy arose, however, on the issue of whether a reduction of benefits to zero instead of suspension would be in accord with the meaning of the term as used in the Convention. A strong body of opinion maintained that, in the case of reductions, there must be some residue of benefits, however small. The United States Government considered that this interpretation was both illogical and unworkable. The issue was not settled by the Committee.

Qualifying Conditions

This part of the conclusions dealt with various qualifying conditions that the breadwinner and his dependents and survivors must meet to obtain a pension. Most of the discussion in this area dealt with the length of qualifying periods.

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[13] Before the 1965 amendments, the OASDHI system paid benefits to mothers of eligible children for as long as the child was eligible. These amendments liberalized the child's benefits for children aged 18–21 attending school but did not extend mothers' benefits in such cases.

Old-age and invalidity pensions.—The qualifying periods proposed for invalidity pensions were 15 years of contributions or employment, 10 years of residence, or a yearly average number of contributions prescribed by national legislation with a minimum of 3 years. For old-age pensions, the proposed periods were 30 years of contributions or employment, 20 years of residence, or a yearly average number of contributions prescribed by national legislation. For reduced invalidity or old-age benefits, the pensioner needed half the contribution or employment requirement for full benefits while retaining the 3-year minimum for reduced invalidity pensions. From the point of view of the United States Government the difficulty was that the periods proposed were for the most part too long and that, for invalidity pensions, there was no provision for a test of recency of work.

The Workers and Employers Group withdrew their amendments in an effort to save time (21 amendments including 10 from the United States Government had been proposed). They asked all Government Members to withdraw their amendments and adopt the proposed conclusions, which merely restate the provisions of Convention No. 102. Many Governments objected, and the United States Government suggested a compromise solution to give each Government Member a limited period to explain his amendment and the Workers and Employers Groups an equal period to reply. The Workers and Employers agreed but announced that they were opposed to all Government amendments and would vote to adopt only the proposed conclusions. Neither group commented in any way on the Government amendments.

Many Governments were highly critical of this action, but the compromise proposed by the United States Government had two beneficial effects. It gave the Governments an opportunity to put their views on record and, on a few points that needed clarification, it provided an opportunity to have the sense of certain amendments referred to the Drafting Committee appointed by the Committee for clarification of the text. For example, an amendment offered by the United States Government, which was referred to the Drafting Committee, clarified the point that, by the words "in accordance with rules prescribed by national legislation" used in connection with the qualifying periods for invalidity pensions, the conclusions intended to permit national legislation to require that such qualifying periods be met within a certain period before the contingency—that is, a test of recency of work.

Ultimately, the original text was adopted. The United States Government, however, abstained from voting on the grounds that the textual points had not been adequately discussed. It reserved the right to reopen them next year for full discussion.

A provision for paying reduced old-age pensions to persons who, when the Convention comes into force, are too old to qualify for a normal pension was objected to on the grounds that this was basically a transitional matter, and that there was already a provision for reduced pensions for persons who have not fulfilled the requirements for full pensions. This provision was transferred to the Recommendation.

Survivor pensions.—A provision that a survivor pension should be granted to persons whose breadwinner met the qualifying period for a full or reduced invalidity pension when he died was unanimously adopted.

A provision that a protected widow not qualified for a survivor pension should receive a temporary adjustment allowance was transferred to the Recommendation on the grounds that it was not of major importance and that few countries have such a provision.

Interruptions in qualifying periods.—A provision requiring that periods of temporary incapacity for work and periods of involuntary unemployment be gratuitously included as periods of coverage in the computations of eligibility was transferred to the Recommendation on the grounds that it is difficult to administer and that there are many easier ways to accomplish the same result—by having shorter eligibility requirements that make allowance for such periods, for example.

The principle of vesting contributory pension rights, though not necessarily the right to withdraw contributions, was adopted without dissent.

Pensions to be Provided

This part of the conclusions dealt generally with the rate of pensions that must be provided to meet the standards of a Convention. It also dealt with

offsets, adjustments, and special increments and with suspension of entitlement and its residual effect. To understand these points, some understanding of Convention No. 102 is also necessary.

Convention No. 102 provides three alternative measures by which the pension rates of a country's system may be determined to conform to minimum standards. Two of these alternatives are available when classes of employees or classes of the economically active population are protected. The first provides that where pensions are computed on the basis of prior earnings, for the "standard beneficiary" the rate must be at least a stated percentage (shown in the accompanying table) of average earnings subject to a maximum not less than the wage of a skilled manual male employee in the country. The second provides that when the pension is not related to prior earnings, the rate for the standard beneficiary must be at least the stated percentage of the wage of an ordinary adult male laborer in the country. In determining the rate any family allowances that are payable may be included along with the pension amount, but the prior earnings or wage must also include the amount of any family allowances payable to a person with the same family responsibilities.

A skilled manual male employee is defined in Convention No. 102 as any of the following: (a) a fitter or turner in the manufacture of nonelectrical machinery; (b) one typical of skilled labor who is a protected employee in the country's major group of economic activities; (c) one whose earnings are at least as much as the earnings of 75 percent of the persons protected; or (d) one whose earnings are 125 percent of the average earnings of all persons protected. An ordinary adult male laborer is defined as: (a) a person typical of unskilled labor in the manufacture of nonelectrical machinery or (b) one employed in the country's major group of economic activities.

For purposes of Convention No. 102, the "standard old-age beneficiary" is a man with a wife, both of pensionable age; the "standard invalidity beneficiary" is a man with a wife and two children; the "standard survivor beneficiary" is a widow with two children. The minimum pension rate under the alternative formulas for all three standard beneficiaries is 40 percent. It may be reduced proportionately, up to 10 percentage points, as the qualifying periods of contribution or employment are reduced to one-third of the maximum permissible or the qualifying periods of residence are reduced to 5 years.

The third alternative in Convention No. 102, available where all residents who meet a means test are protected, permits benefits to be calculated in accordance with prescribed rules that are sufficient to maintain the family of the beneficiary in health and decency and, together with any substantial means they may have, are not less than benefits calculated under the alternative based on the wage of an ordinary adult male laborer. This requirement is deemed to be met for a country if the total benefits paid are at least 30 percent higher than they would be if the flat-rate alternative were applied under a social insurance system in that country that covers 20 percent of the entire economically active population.

Computing standard pensions.—The conclusions before the Committee followed the basic pattern of Convention No. 102 for establishing pension rate standards. In fact, to define the terms used, one must refer to Convention No. 102. Where employees or categories of the economically active population are protected, the pension rates must be at least those provided in the Convention for the standard beneficiaries, taking into account all prior earnings up to the maximum limit based on the wage of a skilled manual male employee or of an ordinary adult male laborer, as the case may be. A third alternative, where all residents or residents meeting a means test are protected permits the establishment of a scale by national legislation that, after deducting substantial means, provides adequate benefits not less than those based on wage of an ordinary adult male laborer.

The inclusion of three alternative methods for determining pension rates in the Convention is clearly to enable compliance by both contributory and noncontributory systems using any of the three major coverage patterns: employees only, employees and the self-employed (the economically active population), or residents. This approach is generally accepted as a desirably flexible one. The Canadian Government, however, pointed out to the Committee that none of the alternatives yields a realistic or reasonable standard for systems paying pensions that are partly contributory and partly wage-related, as is the case in Canada. This defect was recognized by the Committee, and it was agreed that the ILO staff should rectify

it in preparing the draft Convention for consideration next year.

The definitions of the standard beneficiaries, identical to those in Convention No. 102, were retained.

Size of pensions.—For old-age and invalidity pensions, the conclusions proposed to increase the percentages of prior earnings that the pensions for the standard beneficiaries should represent—from the 40 percent required by Convention No. 102 to 50 percent. For survivor benefits, no increase from the 40-percent figure was proposed.

Efforts to reduce percentages proposed for invalidity and old age to those contained in Convention No. 102 were narrowly defeated. A compromise of 45 percent for old age was then adopted by a narrow margin. Subsequently, an effort to raise the figure for survivors from 40 percent to 45 percent succeeded.

The United States was in a unique position on this question. Most countries have placed the greatest emphasis on old-age pensions and disability pensions and much less emphasis on survivor pensions. In the United States, the emphasis in recent years has been more on maintaining the level of invalidity and survivor protection in relation to old-age protection and on assuring a reasonable level of benefit adequacy in relation to normal family size. Consequently, the United States could meet pension-rate standards under the proposed Convention as high as 70 percent for 4-member invalidity beneficiary families and 3-member survivor beneficiary families but only as high as 47 percent for 2-member old-age beneficiary families.

The United States Government had submitted two alternative amendments on this point. One of these would have substituted the figures 45 percent for old-age pensions, 52½ percent for survivor pensions, and 60 percent for invalidity pensions. The theory behind this was that financial needs vary more with the number of persons in a pensionable family unit than with the kind of pension involved, and that a minimum of 30 percent should be paid for one family member, an additional 15 percent for the second family mem- and 7½ percent for each additional family member, regardless of the kind of pension.

It became clear early in the discussion that nearly everyone on the Committee felt that this proposal was too advanced to be adopted at the present stage of development of social security standards. It was therefore withdrawn in favor of the other amendment that would have given members a choice between the originally proposed old-age, survivor, and invalidity rates of 50 percent, 40 percent, and 50 percent and the United States proposal of 45 percent, 52½ percent, and 60 percent. Because the original 50-percent rate for old age had already been reduced to 45 percent by Committee action, there was no longer an incentive for a Member to adopt the alternative schedule in the second U.S. Government amendment. The amendment gained considerable support, but it was withdrawn in exchange for the Committee's general assent to a reintroduction of the concept later, in connection with the amendment described below under the heading "higher overall protection."

Adjustments and special increments.—The principle incorporated in Convention No. 102 that earnings used to determine the size of the pension should take account of family allowances payable to the standard beneficiary family was adopted without dissent. Also adopted was the principle, contained in Conventions No. 102 and No. 121, that pension rates should be periodically reviewed when substantial changes in the general level earnings are produced by changes in the cost of living. The method of review would be left to the discretion of the Member Government. A provision for supplementary benefits for invalidity pensioners who need constant attention, (included in Convention No. 121) was transferred to the Recommendation after a close vote.

Suspension of entitlement and its residual effect.—The provision dealing with the conditions under which entitlement to pensions could be suspended originally included eight such conditions. All eight are included in Convention No. 102. Convention No. 121 omits only one, that permitting suspension up to the limit of the additional amount being received, when the beneficiary is receiving another cash benefit or an indemnity from a third party. Successful moves were made to modify both the condition permitting suspension of a pension when the pensioner is abroad (by limiting application to noncontributory pensions and to pensioners who fail to meet minimum conditions in the law), as well as the condition relating to duplicate pensions or indemnities (by

limiting application to cases where the pension is for the same contingency and eliminating third party indemnities as a condition altogether). A condition for suspending survivor pensions to a widow as long as she is living with a man as his wife was eliminated on the grounds that social security programs are not designed to be keepers of public or private morals.

The Committee adopted the principle that even if a pension is suspended, cash benefits otherwise due the pensioner's dependents should be paid. This principle is a carryover from Convention No. 121 that did not appear in Convention No. 102. The Committee also adopted the new principle that, for purposes of the Convention, family allowances may be used to offset benefits payable to survivor children.

The Committee added two other principles, not included in the conclusions, in this area. First, it adopted the principle that if a protected person is entitled to several pensions simultaneously, he may be limited to receiving only one—his own choice or the largest one. Second, it adopted the principle that the Member must provide rehabilitation services designed to return disabled persons to useful work and take measures to further their placement in suitable employment. The latter is a carryover from Convention No. 121, but the former is an innovation.

Legal, Administrative, and Financial Safeguards

The conclusions in this part concern the legal, administrative, and financial safeguards a system must have to qualify under the Convention. Originally, the provisions were almost identical to comparable provisions in Conventions No. 102 and No. 121.

The principles that the Members should accept responsibility for due provision of pensions and for proper administration were adopted without discussion.

The principle fixing the right of appeal by a claimant not satisfied with the decision on his claim was adopted with only a minor change in language. But the principle permitting settlement of the claim by a special tribunal dealing with social security questions as an alternative to right of appeal (a carryover from both Conventions No. 102 and No. 121) was strongly objected to and ultimately discarded on the grounds that it contradicted a fundamental human right of appeal to a regular court of justice. It was also pointed out that though this rejected alternative is appropriate to the field of employment injuries, it is not necessarily so to the field of pensions. The right to be represented by an organization of protected persons in an appeal, a right not included in either Conventions No. 102 or No. 121, was incorporated here.

The conclusions originally provided that when a pension institution is not regulated by public authority, representatives of protected persons should participate in its management or be associated in a consultative capacity, and representatives of employers and government may also participate. Identical provisions were included in Conventions No. 102 and No. 121. A modification was made by the Committee, however, whereby any contributory system, or any noncontributory system not regulated by public authority, must include representatives of protected persons in the management. This change was strongly opposed, particularly by Governments whose contributory systems are presently regulated by public authorities. They argued that public regulation is adequate protection for the protected persons and that the protected persons are generally satisfied to have their representatives consulted on policy, a practice that is widespread. This question was decided by an extremely close vote, and there was much confusion at the time about the precise meaning of the language adopted. No doubt, this will be a subject of much discussion next year.

Final Provisions

The conclusions provided for (1) automatic renunciation of the appropriate portions of Conventions Nos. 35 to 40 upon ratification of the new Convention in the comparable pension branch and occupational section, (2) for automatic elimination of the application of comparable parts of Convention No. 102 upon ratification of the new Convention in the appropriate pension branch and in both occupational sectors, and (3) for the possibility of revision of the new Convention by subsequent instruments. These provisions were generally accepted.

HIGHER OVERALL PROTECTION

As mentioned, the United States Government expressed considerable concern throughout the proceedings that the new Convention would not be ratified by many countries, not so much because it might contain higher standards but because it might contain provisions that were too detailed or that dealt with insignificant matters. To offset these difficulties, the United States moved to have included among the Final Provisions one that would permit a country whose pension system provides higher overall protection than is generally required by the new Convention to ratify on the basis of this provision without adhering to every detail in the new Convention.

In general terms, the provision suggested by the United States Government would require that, in order to ratify, a country's system should provide protection in all pension branches to all occupational sectors and extend protection to all residents or to at least 85 percent of all economically active persons, their wives, and their children. Substantially all contingencies—all the major ones—required by the new Convention would have to be covered. The qualifying conditions under the system would have to be lower for normal pensions than those required by the Convention. Pension rates would have to represent at least the following proportion of former earnings: for old-age pensions, 45 percent; for survivor pensions, 52½ percent; for invalidity pensions, 60 percent. In addition, the scheme would have to provide all the legal, administrative, and financial safeguards required by the new Convention.

Considerable advance preparation went into the formulation of the United States Government proposal. It had also been discussed informally with a number of members of the Committee and had been anticipated several times in the formal Committee debate. Coming as it did at the end of the debate on the new Convention, the discussion of the proposal was both a climax and a high point. Though there was some lack of understanding on the detail, the entire Committee understood the basic principle and the discussions proceeded on the highest plane.

The first and probably the only insignificant question raised was on the legality of such a provision. A representative of the legal Advisor's Office explained numerous precedents in past ILO instruments. A motion to the effect that it was legally possible to examine this type of proposal was then adopted. A question was also raised as to whether this proposal was designed specifically to facilitate U. S. ratification. The United States answered that it had submitted the proposal partly out of self-interest but that, in addition, it wanted a provision benefitting all countries with advanced systems who are in a similar position. As a result of the debate, the United States substituted for its specific proposal a resolution, subsequently adopted, that put the Committee on record as accepting the general principle behind the proposal, leaving to the ILO staff the responsibility of formulating a specific provision that would be cleared with the Member Governments and discussed in detail next year.

THE RECOMMENDATION

Consideration of the points proposed for the new Convention had taken two full weeks. There remained only one session to consider the points proposed for a Recommendation. Nevertheless the Committee reviewed all those proposed and, in the end, formulated an instrument that in the main contains standards considerably more advanced than those agreed to for the Convention.

A detailed review of the provisions of the Recommendation is not presented here. The accompanying chart shows, however, the most significant provisions proposed for the Convention, how they evolved from Convention No. 102 through Convention No. 121, and what improvements are envisioned by the Recommendation.

THE PLENARY DISCUSSION

The report of the Social Security Committee was discussed at a Plenary Session of the Conference. The speakers included the Employer Vice Chairman of the Committee and two other employer representatives, the Worker Vice Chairman of the Committee, and seven Government representatives.

The action taken by the Committee to raise the proportion (from 50 percent to 75 percent) of the economically active population that must be covered by Members choosing to ratify under that provision was criticized by the Employer Vice

Chairman and four Governments. Their criticism was based on arguments similar to those raised in the Committee: that this will make ratification impossible for many countries for many years to come and that it advances too far beyond the standards of Convention No. 102.

The Worker Vice Chairman took exception to the provision for benefits to childless widows. The Workers felt that the conclusion on this point was not in accord with the decision of the Committee. Previously, the Workers sought to have it specified that any childless widow who meets the "minimum duration of marriage" condition should be entitled to a benefit, but the Committee Report appears to sustain the theory that this is only one of several possible conditions that can be imposed simultaneously.

The Employer Vice Chairman and one Government objected to the rise in the standard pension rates on the grounds that they will be higher than most countries can meet. The United States Employer representative also expressed the view that due consideration was not given to the less developed countries' ability to pay for high benefits at their present levels of economic development.

Three Governments expressed serious reservations about requiring that members provide rehabilitation services for disabled persons. Their objection was basically that the provision presupposes a level of development not present in many countries that might otherwise be able to meet the Convention's standards.

The conclusion of the Committee that the persons protected should participate by law in the management of publicly-administered pension systems came in for strongly worded criticism by two Governments and by the United States Employer Representative. Their objections were that this situation was the exception, rather than the rule, in most publicly-administered programs and that it was unnecessary because the protected persons' interests were adequately represented by their constitutionally elected parliaments.

The Employer Vice Chairman of the Committee noted that the Employer Group would vote against the proposed Recommendation on the grounds that it was unrealistic in the degree that it advanced beyond the conclusions for the Convention and, particularly, because the Committee had not devoted adequate time to its consideration.

The only major objections raised by the United States Government were that the proposed qualifying periods for benefits are too long and that the Committee had been deprived of an adequate opportunity to discuss the possibility of changing them. On this latter point, support was forthcoming from another Government, while the Workers defended the Committee's action. The United States Government also announced to the Conference that its reasons for taking an intense interest in perfecting the Conclusions of the Committee were that it desires to see a Convention produced that will be the basis for the development of adequate and sound social security systems in all countries and that it hopes the Convention is of such a nature that the United States may give serious consideration to its ratification.

The conclusions for both the proposed Convention and the proposed Recommendation were adopted overwhelmingly by the Conference. A resolution to put this subject on the agenda for discussion at the 51st Conference in 1967 was adopted without dissent.

CONCLUSIONS

All parties, regardless of their specific reservations, seem agreed that the Committee and the Conference have done an excellent job in paving the way for both a Convention and a Recommendation to be adopted in 1967. Undoubtedly, however, a number of points will be raised in 1967 on which there were sharp differences in 1966. Among these will most assuredly be the following issues: (1) whether separate ratification for the agricultural sector should be possible; (2) the proportion of the economically active population that should be protected; (3) the length of the qualifying periods; (4) the level of standard pensions; (5) whether special social security tribunals should be allowed in lieu of court appeals; and (6) whether participation of protected persons in the management of contributory and other publicly regulated pension systems should be mandatory.

Some discussion may also be directed toward the United States Government proposal for "higher overall protection." The success of this proposal will depend to a large extent on how broadly applicable it can be made without compromising on fundamental issues.

Evolution of conclusions proposed by new ILO Convention and Recommendation on old-age, invalidity, and survivors insurance (and comparison with provisions of existing instruments)

Convention 102	Convention 121	Proposed Convention	Proposed Recommendation
Preliminary provisions			
Ratification for any 3 of 9 branches, at least 1 of which must be unemployment benefits, employment-injury benefits, or old-age, invalidity, or survivor pensions. Separate ratification by occupational sector not possible.	Separate ratification by pension branch not applicable. Separate ratification by occupational sector not possible.	Separate ratification possible for each pension branch (old-age, invalidity, and survivors), and for each occupational sector (nonagricultural and agricultural).	Not applicable.
Temporary exception for less-developed countries who protect at least 50% of all employees in industrial undertakings of 20 persons or more (wives and children of such persons for survivor purposes).	Temporary exception to certain provisions for less-developed countries who protect at least 75% of all employees in industrial undertakings and, in case of death, prescribed categories of beneficiaries.	Temporary exception for less-developed countries who protect (a) at least 25% of all employees, their wives, and their children or (b) at least 50% of all employees in industrial undertakings, their wives, and their children. Reason must be stated and must be accompanied by a declaration undertaking to increase the number of protected persons as soon as circumstances permit.	Not applicable.
Convention not applicable to seafarers, including sea fishermen.	Possible exclusion of seafarers, including sea fishermen, and public servants protected by comparable systems from application of convention. Possible inclusion by declaration.	Possible exclusion of seafarers, including sea fishermen, and public servants protected by comparable systems from application of convention. Possible inclusion by declaration.	Not applicable.
Persons protected			
System must protect one of following: (a) at least 50% of all employees (their wives and children for survivor purposes); (b) classes of economically active population equal to at least 20% of all residents (their wives and children for survivor purposes); (c) all residents who meet a means test.	Legislation must protect all employees (including apprentices) in public and private sectors (including cooperatives), and their wives and children in case of death.	System must protect one of following: (a) all employees, (including apprentices) in sector(s) of ratification, their wives and children, and other prescribed categories; (b) at least 75% of economically active population, their wives and children, and other prescribed categories; (c) all residents, or all residents meeting a means test.	Not applicable.
No comparable provision.	Possible exclusions from item above: for (a) casual employees or employees not in employer's trade or business; (b) outworkers; (c) family employees; and (d) other categories not in excess of 10 percent of all employees.	Possible exclusions from (a) in item above: casual employees; members of employer's family who work for him without pay; other categories not in excess of the equivalent of 10% of employees in the protected sectors.	Proposed extensions of old-age and invalidity protection to: casual employees and all economically active persons (and survivor protection to their wives and children).
Contingencies covered			
Invalidity defined as "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 benefits."	Where due to employment injury: (a) morbid condition; (b) incapacity for work resulting therefrom and involving suspension of earnings; (c) total loss of earning capacity or partial loss in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and (d) loss of support due to breadwinner's death.	Invalidity defined as "incapacity to engage in any gainful activity to an extent prescribed by national legislation, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity."	Proposes (a) that the definition of invalidity take into account inability involving substantial gain; and (b) that a reduced pension should be provided for partial invalidity.
The age at which old-age benefits become payable "shall be not more than 65 years of age or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned."	Not applicable.	The age at which old-age pensions become payable should be "age 65 or such higher age as may be fixed by the competent authorities taking into account appropriate demographic, economic and social criteria, the pertinence of which shall be demonstrated statistically."	Proposes that: 1. Pensions should be paid, under prescribed conditions, to persons over prescribed age but who have not yet reached retirement age if their unfitness for work is established or presumed; if they have been involuntarily unemployed for a prescribed period; or for other socially desirable reasons. 2. Pensionable age should be lowered under prescribed conditions for the following: (a) persons who have been engaged in occupations deemed arduous or unhealthy, after consultation with employers' and workers' organizations; (b) women, whose pensionable age should not be higher than 60; (c) other categories of prescribed persons if this desirable for social reasons.
A reduced pension shall be payable to person who by reason of his advanced age when legislation came into force has not satisfied the normal qualifying conditions based on contributions or employment, unless a benefit is secured to him at an age higher than normal pensionable age.			3. A reduced old-age pension should be payable to a person who by reason only of advanced age when legislation came into force has not satisfied the normal qualifying conditions, unless a normal pension is secured to him at an age higher than normal pensionable age.

Evolution of conclusions proposed by new ILO Convention and Recommendation on old-age, invalidity, and survivors insurance (and comparison with provisions of existing instruments)—*Continued*

Convention 102	Convention 121	Proposed Convention	Proposed Recommendation
		Contingencies covered—*Continued*	
Survivor pensions are payable to widows and children of breadwinner.	Death benefits are payable to: widows, as prescribed; disabled and dependent widowers (except where cash benefits to other survivors appreciably exceed those required by Convention and where other social security systems provide widower with benefits in excess of invalidity benefits required by Convention 102; dependent children; and such other persons as may be prescribed.	Survivor pensions are payable to: widows, under prescribed conditions; disabled dependent widowers, under prescribed conditions; and children of breadwinner, under prescribed conditions.	No proposal.
Widow's pension may be made conditional on her being presumed, in accordance with national law and regulations, to be incapable of self-support.	Death benefit payable to qualified widow unconditionally.	Widow's pension payable when she is presumed incapable of self-support, which should be at least (a) when she reaches pensionable age or lower prescribed age; (b) if she is disabled; (c) if she is caring for a child who is entitled to a pension.	Proposes (a) that right of a widow to survivor pension should not be made subject to the condition that she is presumed incapable of self-support; (b) that widows cease to be subject to a retirement test after a specified age for both old-age and survivor benefits.
For a childless widow presumed to be incapable of self-support to be entitled to a survivor's benefit, a minimum duration of marriage may be required.	Death benefit payable to qualified widow unconditionally.	For a childless widow to be entitled to a survivor pension, a minimum duration of marriage may be required.	A widow who does not herself fulfill the qualifying conditions should be entitled to an allowance for a period prescribed or to a lump sum.
Child defined as under school-leaving age or under age 15, whichever is lower.	Child defined as (a) under school-leaving age or under age 15, whichever is higher; (b) under a prescribed higher age than in (a) and is an apprentice, a student, or disabled.	Child survivor's pension should be payable if the child is (a) under school-leaving age or under age 15, whichever is lower; (b) under a prescribed higher age than in (a) and is an apprentice, a student, or disabled.	No proposal.
For old-age and survivors benefit, (a) benefit may be suspended if person is engaged in any prescribed gainful activity; (b) contributory benefit may be reduced when earnings of beneficiary exceed a prescribed amount; (c) noncontributory benefit may be reduced where earnings of beneficiary or his other means, or the two taken together, exceed a prescribed amount.	Not applicable.	Permits suspension or reduction in following cases: (a) suspension of any pension if beneficiary is engaged in any gainful activity; (b) reduction of any pension if beneficiary is engaged in any gainful activity, and his earnings exceed a prescribed amount, provided that the reduction does not exceed the earnings; (c) reduction of a noncontributory pension if the combination of earnings and other means exceed a prescribed amount.	No proposal.
		Qualifying conditions	
Maximum permissible qualifying periods for: *Full invalidity pensions:* 15 years of contributions or employment, or 10 years of residence; *or* minimum of 3 years of contributions and the prescribed yearly average number of contributions.[1] *Reduced invalidity pensions:* 5 years of contributions or employment; *or* minimum of 3 years of contributions and half the yearly average number of contributions prescribed for full pensions.[1] *Full old-age pensions:* 30 years of contributions or employment, or 20 years of residence; *or* a prescribed qualifying period of contributions and the prescribed yearly average number of contributions.[1] *Reduced old-age pension:* 15 years of contributions or employment; *or* a prescribed qualifying period of contributions and half the number of contributions prescribed by legislation for full pensions.[1]	Eligibility for benefits may not be made subject to the length of employment, the duration of insurance, or the payment of contributions. A period of exposure may be prescribed for occupational disease.	Maximum permissible qualifying periods for: *Full invalidity pensions:* 15 years of contributions or employment, or 10 years of residence; *or* minimum of 3 years of contributions and the yearly average number or yearly number of contributions prescribed by legislation.[1] *Reduced invalidity pensions:* 5 years of contributions or employment; *or* minimum of 3 years of contributions and half the yearly number of contributions prescribed for full pensions.[1] *Full old-age pensions:* 30 years of contributions or employment, or 20 years of residence; *or* a prescribed qualifying period of contributions and the yearly average number of contributions prescribed by legislation.[1] *Reduced old-age pensions:* 15 years of contributions or employment; *or* a prescribed qualifying period of contributions and half the yearly average number of contributions prescribed by legislation for full pensions.[1]	Maximum qualifying period should be: For *full invalidity pensions:* (a) 5 years of contributions, employment, or residence; (b) reduced or eliminated for young workers under a prescribed age or where invalidity is due to an accident. For *full old-age pensions*, 20 years of contributions or employment, or 15 years of residence. For *reduced old-age pensions*, 10 years of contributions or employment.
Maximum permissible conditions that may be imposed on breadwinner to secure full or reduced pensions to his survivors are the same as for full and reduced invalidity pensions (see full and reduced invalidity pensions, above).	See above.	Full or reduced survivor pensions should be secured to persons whose breadwinner has met the qualifications for full or reduced invalidity pensions.	Maximum requirements for survivor pensions: (a) should be reduced as proposed in Recommendation for full invalidity pensions; and (b) should be eliminated or reduced where death of breadwinner is due to an accident.

[1] Alternative is open only where the system, in principle, protects all economically active persons.

Evolution of conclusions proposed by new ILO Convention and Recommendation on old-age, invalidity, and survivors insurance (and comparison with provisions of existing instruments)—*Continued*

Convention 102	Convention 121	Proposed Convention	Proposed Recommendation
		Qualifying conditions—*Continued*	
No comparable provision.	Not applicable.	Contributory pension rights course of acquisition should be maintained even if the protected person ceases to be in covered occupation.	No proposal.
No comparable provision.	Not applicable.	No comparable provision.	Where qualifying periods are based on contributions or employment, the following should be assimilated in calculating such periods: periods of incapacity due to sickness, accident, or maternity; periods of temporary unemployment for which benefits were paid; periods of compulsory military service.
		Benefits to be provided	
To determine the pension rate— 1. Where employees or economically active population are protected: (a) if with reference to earnings, specified percent of such earnings must be taken into account up to a limit at least equal to the wage of a skilled manual male employee; (b) if without reference to earnings, the rate must be at least equal to a specified percent of wage of ordinary male adult laborer.	Periodic payments may be calculated as follows: 1. The specified percent of the total previous earnings of beneficiary or breadwinner up to a limit at least equal to the wage of a skilled manual male employee; *or*	To determine the pension rate— 1. Where employees or economically active population are protected: (a) if with reference to earnings, special percent of such earnings must be taken into account up to the limit at least equal to the wage of a skilled manual male employee; (b) if without reference to earnings, the rate must be at least equal a specified percent of total wage of ordinary male adult laborer.	No proposed change.
2. Where protection extends to all residents (with or without a means test), the rate may be determined according to a scale prescribed by legislation, reduced by the amount the family means exceed the means prescribed—the total of the pension and the excess means to be sufficient to maintain the family in health and decency and not to be less than the corresponding pension calculated as in 1(b), above.[2]	2. The specified percent of the total wage of an ordinary adult male laborer. To obtain the applicable rate, the amount of family allowances payable during the contingency may be added to the benefit payable.	2. Where protection extends to all residents (with or without a means test), the rate may be determined according to a scale prescribed by legislation, reduced by the amount the family means exceed the means prescribed—the total of the pension and the excess means to be sufficient to maintain the family in health and decency and not to be less than the corresponding pension calculated as in 1(b), above.	
Standard beneficiaries: for old-age—man and wife of retirement age; for invalidity—man, wife, and 2 children; for survivors—widow and 2 children.	Standard beneficiaries: for temporary or initial incapacity for work—man, wife, and 2 children; for total loss of earning capacity or corresponding loss of faculty—man, wife, and 2 children; death of breadwinner—widow and 2 children.	Standard beneficiaries: for old-age—man and wife of retirement age; for invalidity—man, wife, and 2 children; for survivors—widow and 2 children.	No proposed change.
Minimum portion of former earnings that must be represented by pensions calculated under above methods of determining rate for standard beneficiaries: old-age 40%; invalidity: 40%; survivors: 40%.	Minimum portion of former earnings that must be represented by periodic payment: temporary or initial incapacity: 60%; total incapacity, 60%; death of breadwinner: 50%. No periodic payment shall be less than a prescribed minimum amount.	Minimum portion of former earnings that must be represented by pensions calculated under above method of determining rate for standard beneficiaries: old-age, 45%; invalidity, 50%; survivors, 45%.	Minimum portion of former earnings that must be represented by pensions calculated under above method of determining rate for standard beneficiaries: old-age, 50%; invalidity, 50%; survivors, 50%. Minimum amounts should be prescribed that would assure a minimum standard of living.
No comparable provision.	Not applicable.	No comparable provision.	Pensions conditioned on retirement should be increased where retirement is deferred or pension claim is deferred.
Pension rates and employment injury payments shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.	Cash benefit rates shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living. Both findings and action must be reported.	Pension rates should be reviewed following substantial changes in general level of earnings where these result from substantial changes in the cost of living. Both findings and action taken must be reported.	Pension amounts should be periodically adjusted, taking account of changes in the general level of earnings or the cost of living.
No comparable provision.	Increments in periodical payments or other supplementary or special benefits shall be provided for disabled persons requiring the constant help or attendance of another person.	No comparable provision.	Increments in pensions or other supplementary or special benefits should be provided for pensioners requiring constant help or attendance of another person.

[2] This requirement is deemed satisfied if the total amount of the benefits exceeds by at least 30% the amount obtained by applying the rate as described above, categories of the economically active population constituting 20% of all residents. To obtain the applicable rate the amount of family allowances payable during the contingency may be added to the benefit payable.

Evolution of conclusions proposed by new ILO Convention and Recommendation on old-age, invalidity, and survivors insurance (and comparison with provisions of existing instruments)—*Continued*

Convention 102	Convention 121	Proposed Convention	Proposed Recommendation
		Benefits to be provided—*Continued*	
Pensions may be suspended: (a) as long as pensioner is absent from Member's territory; (b) as long as the person concerned is maintained at public expense or at the expense of social security institution or service; (c) as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period for which he is being indemnified by a third party, provided that the suspended part may not exceed the other benefit; (d) where the person has made a fraudulent claim; (e) where the contingency has been caused by a criminal offense of the person, or wilful misconduct of the person concerned; (f) where pensioner fails to use medical care or rehabilitation services without good cause, or fails to report discontinuance of the contingency; (g) where a widow is living with a man as his wife.	Benefits may be suspended: (a) as long as pensioner is absent from Member's territory; (b) as long as the person concerned is maintained at public expense or at the expense of social security institution or service; (c) where the person has made a fraudulent claim; (d) where employment injury has been caused by a criminal offense of the person; (e) where employment injury has been caused by voluntary intoxication or by serious and wilful misconduct of the person concerned; (f) where pensioner fails to use medical care or rehabilitation services without good cause, or fails to report discontinuance of the contingency; (g) as long as the surviving spouse is living with another person as spouse.	Pensions may be suspended: (a) as long as pensioner is absent from Member's territory except, under prescribed conditions, with respect to a contributory benefit; (b) as long as the person concerned is maintained at public expense or at the expense of social security institution or service; (c) as long as the person concerned is in receipt of another social security cash benefit for the same contingency, other than a family benefit, provided that the suspended part may not exceed the other benefit; (d) where the person has made a fraudulent claim; (e) where pensioner fails to use medical care or rehabilitation services without good cause, or fails to report discontinuance of the contingency.	A benefit to which a protected person would otherwise be entitled should not be suspended solely because the person concerned is absent from Member's territory.
No comparable provision.	Where pension to worker is suspended, part of benefit otherwise due shall be paid to dependents.	Where pension to worker is suspended, part of benefit otherwise due shall be paid to dependents.	No proposal.
No comparable provision.	Not applicable.	If pensioner is entitled to more than one pension under this convention, pensions may be reduced provided that he receives at least the amount of the highest pension.	No proposal.
No comparable provision.	No comparable provision.	Child survivor benefits may be calculated by assimilating other periodical benefits payable to them for purposes of the convention.	No proposal.
No comparable provision.	Members should provide rehabilitation services and placement services for disabled persons.	Members should provide rehabilitation services and placement services for disabled persons.	No proposal.
		Legal, administrative, and technical safeguards	
Claimants have right of appeal in case of refusal or as to nature or amount of benefit. No right of appeal where claim is settled by a tribunal established for the purpose, on which protected persons are represented.	Claimants have right of appeal in case of refusal or as to nature or amount of benefit. No right of appeal where claim is settled by a tribunal established for the purpose, on which protected persons are represented.	Claimants have right of appeal in case of refusal or as to nature or amount of benefit.	No proposal.
No comparable provision.	No comparable provision.	Claimant should have right to representation by a delegate of an organization of protected persons on appeal.	No proposal.
Where the social insurance institution is not publicly regulated (a) representatives of persons protected shall participate in the management or be associated therewith in a consultative capacity; (b) participation of employers and public authority may be provided for.	Where the social insurance institution is not publicly regulated (a) representatives of persons protected shall participate in the management or be associated therewith in a consultative capacity; (b) participation of employers and public authority may be provided for.	Where the social insurance institution is not publicly regulated or where benefits are contributory (a) representatives of protected persons should participate in the management; (b) participation of employers and public authority may be provided for.	No proposal.

NOTE.—Since this article was completed, the proposed texts of the new Convention and Recommendation have been sent to ILO Member Governments for comment (Report IV(1) 51st International Labor Conference (ILO 1966)). The proposed texts of the Convention differ in several important respects from the conclusion that emerged from the 50th Conference.

Because separate ratification by occupational sector is possible, where a country's economy is equally divided between agriculture and nonagricultural sectors, the provisions on persons protected make ratification for each branch possible on the basis of protecting as few as 50% of all employees or as little as 37.5% of the economically active population.

The provisions on length of qualifying periods have been broadened to make possible (1) lower standard pensions based on shorter qualifying periods (like Convention 102); (2) a minimum 5-year requirement for invalidity or survivor benefits that may be raised with advancing age; and (3) reduction of full benefits in proportion to the comparative length of qualifying periods for partial benefits (like Convention 102).

The text reverts to the provisions in Conventions 102 and 121 on the participation of protected persons' representatives in the management of publicly regulated contributory systems. Included are two possible alternatives for ratification by a Member whose system provides higher overall protection but derogates from detailed provisions in minor respects. For less developed countries, the text permits a temporary exception to the requirement of providing rehabilitation services.