

Minimum Standards of Social Security: New International Convention

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The Thirty-fifth Session of the International Labor Conference held in Geneva in June 1952 adopted a new international Convention concerning minimum standards of social security. Adoption of the instrument was the culmination of several years' study and consideration. This article will review the action taken by the Conference and describe the contents of the Convention.

A DECISIVE step forward in the development of international cooperation in the field of social security was taken at the International Labor Conference in June 1952 with the adoption of the Convention on Minimum Standards of Social Security.¹

At the Thirty-fourth Session of the International Labor Conference in June 1951, minimum standards of social security were considered, and tentative conclusions as to what should be included in international standards were developed.² In accordance with the customary double-discussion procedure, these conclusions were reviewed by the International Labor Office, and the text of a proposed Convention was transmitted to the several Governments for their amendments and comments.³ The text embodied both editorial suggestions and revisions of a substantive or policy nature. A revised text based on the replies from the various Governments⁴ was then prepared, and it was this draft that the Conference considered.

International Instruments

Under the Constitution of the International Labor Organization

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¹ Officially designated as Convention 102, the Social Security (Minimum Standards) Convention, 1952.

² For the history and contents of this instrument, see Robert J. Myers, "New International Convention on Social Security," *Social Security Bulletin*, October 1951.

³ Report V (a) (1): *Minimum Standards of Social Security*, International Labor Conference, 35th Session, 1952 (ILO, 1951).

⁴ Report V (a) (2): *Minimum Standards of Social Security*, International Labor Conference, 35th Session, 1952 (ILO, 1952).

two forms of international instruments are recognized—Conventions and Recommendations. In brief, a Convention is a draft multilateral treaty open to ratification by Members of the International Labor Organization. A Member that ratifies undertakes an international obligation to live up to the specific standards prescribed by the Convention and to report annually concerning the manner in which the Member is complying with the Convention.

A Recommendation is used when it is considered that the subject matter of the instrument is not, or not yet, suitable for treatment in a Convention. A Recommendation is, as its name implies, a statement of principles or practices considered desirable. Recommendations are not open to ratification, and Members may therefore adopt parts of a Recommendation or adapt it to their particular conditions without accepting it in full. Accordingly, Recommendations often tend to prescribe higher standards and more specific procedures than Conventions.

Members of the International Labor Organization have an obligation, both as to Recommendations and as to Conventions that they have not ratified, to report, upon request, on the extent to which their law and practice correspond to the standards of the particular instrument selected for reporting.

General Basis of Instrument

The document under consideration at the 1952 session proposed a Convention covering nine branches of social security, with individual and specific detailed provisions for each branch.

The Convention can be ratified by a country having in existence at least three qualifying branches out of the nine branches specified—medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury (workmen's compensation) benefit, family allowances, maternity benefit, invalidity benefit, and survivors benefit.

The draft submitted to the Conference proposed special provisions for countries with a Federal form of government in regard to branches under the jurisdiction of their constituent units. To ratify with respect to such branches, the Central Government would, in effect, have to certify that the required number of constituent units were complying with the Convention at the time of ratification and would have to make periodic reports.

General Position of the United States Government

The United States Government held that changes from the tentative conclusions developed in 1951 seemed essential at three major points. There was, moreover, the question of form: should the instrument be a Recommendation or a Convention. The United States position was strongly in favor of a Recommendation as being more appropriate.

One of these major points related to voluntary insurance. In the tentative conclusions, ratification would be permitted on the basis of a voluntary insurance system that is both supervised and subsidized by the government.⁵ In the text considered by the 1952 Conference, however, the requirement for Government subsidization was eliminated after the Office

⁵ In the vote in the Committee on Social Security at the 1951 Conference as to whether, for purposes of ratification, voluntary insurance must be subsidized by public authorities, the representative of the United States Government voted in opposition.

had given consideration to the replies of the various governments. This change was in line with the United States Government viewpoint.

The United States Government expressed its viewpoint to the 1952 Conference in the following fashion:

The United States Government took the strong position at last year's conference that the minimum standards of social security when contained in an international instrument are not an attempt to do away with voluntary private insurance, and we again affirm these principles. In the United States, social security and private insurance have been complementary, not antagonistic or competitive. This is the opinion of virtually every group in the United States—that social security should be the basic floor of protection upon which voluntary private insurance can and should build.

We have made great progress in providing financial security for our aged citizens, not through any exclusive single governmental solution to the problem, but in many different ways. Part of the problem is handled by the individual citizen himself, through savings, insurance, and home ownership. Still other approaches are through voluntary action by employers, voluntary action by labour organizations and cooperative action by labour and management together. Finally, as an over-all foundation of social security, the Government has established certain programmes of social insurance and social assistance. Thus we are able to place primary reliance on the resourcefulness and voluntary action in cooperation of our people. Man does things more effectively of his own volition when he understands why they must be done, instead of doing them from compulsion. Governmental action is necessary to provide a floor of protection and to assist and promote the growth of voluntary assistance. A nation which chooses to rely on voluntary as well as governmental action for its social protection can find sufficient latitude for that approach within the provisions of this Convention.⁶

The second major point questioned

⁶ The work of the Social Security Committee and the deliberations of the Conference are reported in the *Provisional Records of the International Labor Conference*, Nos. 21, 30, 31, 32, 33, 37, and 38.

by the United States related to the number of branches required to ratify the Convention, if the instrument took that form. From a theoretical standpoint it seems illogical to require any specified number of branches. It seems reasonable, rather, that ratification be permitted on the basis of only one branch; a country would then have the incentive of ratifying as many more branches as it could for the sake of prestige and recorded achievement.

The third major point concerned the special clause applicable to Member States with a Federal system of government. This clause would have relieved such countries, which ratified the Convention on the basis of the laws of the constituent units (in the United States, the several States), from continued compliance with the standards of the Convention. The only requirements were that there be compliance at the time of ratification and that annual reports be made. The United States Government took the position that the ILO Constitution itself contains provisions specifying the obligations of Federal States regarding Conventions and Recommendations and that the insertion in individual conventions of *ad hoc* special treatment clauses for Federal States is, therefore, unsound in principle. In addition, ratification by the Federal Government on the basis of State legislation is a principle that the United States Government would not support.

Conference Organization

Early in the Conference a Committee on Social Security was set up. It consisted of 90 members—40 from Governments, 20 representing the employers, and 30 representing the workers.⁷

Each of the employer members had six votes in the Committee, each of the worker members had four votes, and each of the Government members had three votes, so that there was an equal tripartite division of the votes between the three groups,

⁷ The United States representatives were Leonard Calhoun, attorney, for the employers; Stanley Ruttenberg, of the Congress of Industrial Organizations, for the workers; and the author for the Government.

as is customary in Conference committees.

The Committee elected Jacques Doublet, French Government member, as Chairman. The Vice Chairmen were Leonard Calhoun, United States employer member, and Edward Stark, Austrian worker member; the Reporter was Finn Alexander, Norwegian Government member.

The Committee held 15 meetings, and in addition there were numerous separate meetings of each of the three groups. The Committee prepared a report presenting a general résumé of the discussions it had held and a revised form of the international instrument. This report was adopted unanimously as reflecting the majority decisions of the Committee, although, as will be described later, there was not complete agreement with some of the conclusions adopted.

At its twenty-first and twenty-second plenary sittings, on June 25, the Conference considered the Report of the Committee on Social Security and adopted the Convention by a preliminary vote of 109 to 22.⁸ In the final record vote on the Convention in the twenty-seventh sitting, on June 28, the result was 123 for and 32 against, with the United States Government delegates and worker delegate voting in favor and the employer delegate voting against.⁹ The Convention was therefore adopted by more than the necessary two-thirds majority.

Form of Instrument

Both in the Committee on Social Security and in the Plenary Session, the United States Government voted in favor of a Recommendation. In this respect the United States made the following statement:

As to the form of the proposed instrument, the United States Government has consistently taken the position that a Recommendation would achieve more than a Convention in this field. We are not convinced that the adoption of a blanket Convention

⁸ In the Plenary Session, each country has four votes, two being cast by the Government delegates and one each by the employer and worker delegates.

⁹ All the adverse votes were cast by employer delegates. In all, 52 countries were represented in the final vote.

subject to piecemeal ratification will achieve more practical benefit in improving standards of social security than would a Recommendation which could serve as an aim to be achieved through progressive action in the future.

In the Plenary Session a proposal to change the form from a Convention to a Recommendation was defeated (43 to 111), with the United States Government voting for the Recommendation form.¹⁰ Since other vital matters were settled satisfactorily, the United States Government supported the adoption of the standard as a Convention even though it believed that a Recommendation would be preferable, and in this connection stated:

The United States Government delegation is going to vote for the Convention concerning the minimum standards of social security. We do not believe that the document is perfect, nor do its provisions conform in all respects to our preferences. We realize, however, that in any international development of material such as this, there cannot be unanimity on all the various technical points involved. Nevertheless, on the whole, the proposed Convention does seem to furnish reasonable standards of social security for consideration by all countries throughout the world.

As to the form of the proposed instrument, the United States Government supported the amendment to change its form to a Recommendation. Nevertheless, while believing that a Recommendation would be preferable, we will not withhold our support for a Convention since the Conference prefers that form.

Ratification Basis

To ratify the Convention, a Nation must have in operation three out of the nine branches specified, but there is further provision that at least one must be unemployment, old-age, employment injury, invalidity, or

survivor benefits.¹¹ Thus the second major point raised by the United States Government was not concurred in.

This additional provision is intended, on the whole, to prevent a Nation from ratifying solely on the basis of medical and sickness benefits. For example, countries that have medical care and sickness benefit programs generally provide for maternity medical care in the former and maternity cash benefits in the latter so that in effect there would also be a maternity branch. Therefore, while a country would in reality have only two branches, it would be credited with three if it were not for the limitation introduced.

If a country ratifies the Convention on the basis of three branches, what are its obligations in regard to the remaining branches? The position of the United States Government on this matter was expressed at the Conference as follows:

I would like to make clear that a vote in favour of a Convention does not indicate approval by the United States Government of all of the nine branches of social security contained in the instrument as being appropriate for adoption in the United States. Similarly, in each of the branches there are various alternatives permitted, some of which we do not believe are appropriate for action in the United States. Further, within several of the branches we do not concur with some of the technical features.

It is clear then that, with an instrument of this scope, a vote in favour of the Convention does not bind a State Member to be in favour of each and every one of the branches or alternative within the branches. Our vote on the Convention does not indicate our approval of each of the branches or that we intend to implement or put into effect in the United States the system envisaged by each of the branches.

Provisions of the Convention

The chart summarizes the general provisions of the Convention by indi-

¹¹ In the Convention as reported by the Committee, the basis of ratification was any four branches, but this provision was changed in the Plenary Session on the last day, June 28.

cating separately for each branch the risks against which protection is provided, the coverage requirements, qualifying conditions, amount of benefits, and duration of benefits.

The Convention establishes specific statistical bases for various requirements and provisions in as many instances as possible. At the same time, sufficient flexibility is left for various types of programs.

The various requirements shown are minimum ones. Any country that provides larger benefits or less restrictive conditions of any sort can ratify the Convention. For the maternity benefits branch, for example, the medical care provided for both dependent wives and women workers must be furnished by medical practitioners or by qualified midwives. If a country adopts the more advanced basis of prescribing a medical practitioner in all cases, it would meet the requirement.

As another instance, one qualifying condition for old-age benefits is 30 years of contributions or employment, or 20 years of residence, or—where, in principle, all gainful workers are protected—"the prescribed yearly average number of contributions."¹² This condition would be fulfilled if a country had a much lower requirement. The old-age and survivors insurance program in the United States, for example, requires—depending upon the individual's age in 1950—only 1½ to 10 years of contributions.

The survivor benefits offer a further example. The Convention requires that survivor benefits shall be paid to the dependent children under all circumstances and to the widow incapable of self-support. The Convention, however, leaves it to national laws or regulations to prescribe the definition of "incapable of self-support." Thus the widow's benefits may be restricted only to those with children or those over a certain age—that is, a minimum age at widowhood or a minimum attained age can be required. If the widow has no children, a minimum period of marriage

¹⁰ In Committee the record vote was 183 to 141 in favor of the Convention form, with the United States Government and 6 other Governments (as well as all the employers) voting for the Recommendation form, and 21 Governments (as well as all the workers) voting for the Convention form.

¹² One example of the last alternative is the British system, under which, in general, full old-age pensions are paid only if a yearly average of 50 or more weekly contributions have been paid or credited since the inception of the plan.

Summary of provisions in minimum standards convention

Branch	Contingencies provided for	Coverage ¹	Qualifying conditions	Amount of benefits ²	Duration of benefits
Medical care.....	For covered person and his wife and children, all morbid conditions, and pregnancy.	50% of all employees, or 20% of all residents. ³	Period of contributions, employment, or residence. ⁴	General practitioner care, specialist care at hospitals, ⁵ hospitalization, and essential medicines; maternity care by midwife at least.	26 weeks in each case of morbid condition, or if longer during payment of sickness benefit (also longer for prescribed diseases requiring prolonged care). ⁶
Sickness benefit.....	Incapacity for work due to sickness and resulting loss of earnings.	50% of all employees, or 20% of all residents.	Period of contributions, employment, or residence. ⁴	45% for man, wife, and 2 children.	26 weeks in each case, with 3-day waiting period. ⁷
Unemployment benefit.....	Loss of earnings due to unemployment if able to work.	50% of all employees.....	Period of contributions, employment, or residence. ⁴	45% for man, wife, and 2 children.	13 weeks in a 12-month period, with 7-day waiting period. ⁸
Old-age benefit.....	Age 65 ⁹ and retirement....	50% of all employees, or 20% of all residents.	(a) 30 years of contributions or employment, 20 years of residence, or where all gainfully occupied are covered, yearly average of contributions. ^{10 11} (b) 10 years of contributions or employment, or 5 years of residence. ¹¹	(a) 40% for man and wife of pensionable age. (b) 30% for man and wife of pensionable age.	For life, but may be subject to suspension on account of employment, and in a noncontributory system may be subject to a means test.
Employment injury benefit.	Morbid conditions resulting from employment, and resulting loss of earnings.	50% of all employees.....	Employed at time of injury.	Complete medical care. ¹² For both incapacity for work and invalidity, 50% for man, wife, and 2 children; for survivors, 40% for widow and 2 children. ¹³	Medical care as long as needed. For incapacity for work and invalidity, unlimited duration, with 3-day waiting period for incapacity for work; for survivor benefits, same duration as in that branch.
Family allowances.....	Responsibility for maintenance of children.	50% of all employees, or 20% of all residents.	3 months of contributions or employment, or 1 year of residence.	Cash payments and payments in kind. ¹⁴	During childhood. ¹⁵
Maternity benefit.....	Pregnancy and confinement for female workers and wives of male workers; in addition, for female workers, resulting loss of earnings.	50% of all employees, or 20% of all residents.	Period of contributions, employment, or residence. ⁴	45% for female worker; medical care same as in that branch.	Medical care as long as needed; cash benefits for 12 weeks.
Invalidity benefit.....	Presumably permanent invalidity, with inability to engage in any gainful activity to a prescribed extent.	50% of all employees, or 20% of all residents.	(a) 15 years of contributions or employment, 10 years of residence, or where all gainfully occupied are covered, yearly average of contributions. ^{10 11} (b) 5 years of contributions, employment, or residence. ¹¹	(a) 40% for man, wife, and 2 children. (b) 30% for man, wife, and 2 children.	For duration of invalidity, but not when sickness or old-age benefit payable.
Survivor benefit.....	Presumed incapacity of widow and orphan children for self-support.	50% of all employees, or 20% of all residents.	(a) 15 years of contributions or employment, 10 years of residence, or where all gainfully occupied are covered, yearly average of contributions. ^{10 11} (b) 5 years of contributions, employment, or residence. ¹¹ Additional requirements for widow without children. ¹⁶	(a) 40% for widow and 2 children. (b) 30% for widow and 2 children.	For children, during childhood; ¹⁵ for widow until remarriage. Benefit may be subject to suspension, as in old-age branch.

¹ Percentages indicated are a measurement of the minimum coverage permissible. Where percentages relate to all residents, such coverage is to be obtained from selected classes of gainfully occupied persons (with benefits also available to their wives and children). Alternatively, for all branches except medical care, employment injury, and maternity, the system may cover all residents, subject to a means test. Underdeveloped countries may temporarily cover groups making up at least 50 percent of employees in firms of 20 or more employees.

² For cash benefits other than family allowances, percentages shown relate either (i) to individual average earnings (up to prescribed maximum of the earnings of a typical skilled male worker) or (ii) to a flat benefit, based on the prescribed proportion of earnings of a typical unskilled male worker. As an alternative, for plans with a needs test, covering all residents, benefits must be determined from a fixed scale, but from such amount there may be deducted means of the family in excess of a substantial amount (but total of benefit and means taken into account must be sufficient to maintain in health and decency and must at least equal benefit under (ii)); however, lower individual benefits may be provided under the branches for sickness, old-age, invalidity, or survivor benefits if aggregate paid is at least 30 percent higher than would have been paid under system covering 20 percent of the population and paying flat benefits as in (i).

³ As a further alternative, where based on selected classes of residents, total persons protected (including wives and children) must be 50 percent of all residents.

⁴ Sufficiently long, considering the scope of the system, to prevent abuse.

⁵ Also specialist care outside hospitals if available.

⁶ As temporary exception for underdeveloped countries, 13 weeks in each case.

⁷ As temporary exception for underdeveloped countries, either 13 weeks with 3-day waiting period, or such period as will result in benefits paid for an average

of 10 days per year per person covered.

⁸ Duration of 26 weeks required for systems covering all residents, subject to a means test. For systems covering employees under which duration of benefit varies with contributions and previous benefits, average duration must be 13 weeks. Special conditions are permitted in regard to seasonal workers.

⁹ Higher age is permitted if fixed by competent authority with due regard to working ability of elderly persons.

¹⁰ Reduced benefits must be available (i) when a yearly average of contributions is required, if half the requirement for full benefits is met; (ii) for old-age branch, if there have been 15 years of contributions or employment; and (iii) invalidity and survivor branches, if there have been 5 years of contributions or employment.

¹¹ The conditions of paragraph (a) apply for the benefit rate of paragraph (a) of the next column. Likewise, the conditions of paragraph (b) apply for the benefit rate of paragraph (b). For qualifying periods falling between those of paragraphs (a) and (b), the benefit rate is determined proportionately.

¹² As temporary exception, underdeveloped countries may provide same medical care as in medical care branch.

¹³ Provisions to be made for permanent partial disability at lower benefit rates. Lump-sum payments may be made in lieu of periodic benefits in certain cases.

¹⁴ Aggregate payments must be at least either (i) 3 percent of the wage of an unskilled male worker times the number of children of persons protected or (ii) 1½ percent of such wage times the number of children of all residents.

¹⁵ Children are defined as being under age 15, or under school-leaving age if that age is lower.

¹⁶ Specified length of marriage.

may be required. A country could ratify if it eliminated or lowered these requirements—for example, if benefits were paid to the widow regardless of whether she had children and regardless of her age at widowhood. The old-age and survivors insurance program in the United States would more than meet the conditions, since widows receive benefits not only while they have children in their care but also at age 65 regardless of their age when they were widowed.

The medical benefits branch permits ratification on the basis of a wide variety of plans. Since there are no requirements as to how the medical care shall be furnished, a country can choose whichever methods it deems suitable. Among the various alternatives are the following: (a) a public medical service financed wholly or largely out of general taxes (like that in Great Britain) that is based largely on the payment of a flat amount per covered person to each general practitioner according to the number of persons on his panel, partly on a fee basis for each service performed (as for dentists), and partly on a salary basis (as for specialists working part time or full time in hospitals); (b) a health insurance program relating to the insured working population and specified dependents, under which the doctors' fees and other charges would be paid by the insurance fund either directly to the doctor or on a reimbursement basis to the insured person, subject perhaps to a maximum fee schedule; and (c) sufficient voluntary coverage under various types of private organizations providing the required benefits. Under each of these three methods, if the country so provided, the insured person could have free choice of doctors.

One of the alternative coverage requirements for all branches except unemployment benefits and employment injury benefits is that coverage apply to at least 20 percent of all residents in a country. Another alternative, for plans involving employees only, is for the coverage to be 50 percent of all employees in the country.

Customarily, the extent of coverage of a social security program involving both employees and self-employed persons is determined by relating it to the total employed civilian labor force. In the United States, for example, old-age and survivors insurance coverage in an average week is perhaps 45 million, or 77 percent of the total employed civilian labor force. Of the remaining 23 percent, more than a third are covered by some other public retirement system.

Under the Convention, however, coverage is related not to the labor force but to total population, a not precisely comparable base. When old-age and survivors insurance coverage is related to the total United States population of about 155 million, the proportion covered represents 29 percent, which is well in excess of the minimum requirement of 20 percent. Even if all the labor force (including the Armed Forces) were covered, the ratio would be only about 40 percent, so that the 20-percent requirement actually calls for rather extensive coverage, though at first glance seeming rather low.

The minimum retirement age for old-age pensions is set at 65, although a higher age is permitted for the system if a Government so chooses after considering the working ability of the elderly persons. In actuality, therefore, the retirement age is almost completely flexible, and the figure of 65 is merely a guide.

The Convention establishes three bases for the amount of the cash benefits. Under the first two, benefit rates related to certain specified earnings are developed for standard beneficiary groups (as shown in the chart), and comparable percentages would be applicable for other beneficiary groups within the same branch. In general, these benefit rates are 30–40 percent for long-range benefits (old-age, invalidity, and survivor) and 45 percent for short-range benefits (unemployment, sickness, and maternity). For the employment injury branch, the percentages adopted are 5–10 points higher.

One important change made by the Committee linked benefit rates and

qualifying periods for the three long-range benefit branches. The draft considered by this year's Conference provided, in general, for certain benefit rates combined with long qualifying periods, such as 30 years of contributions for old-age benefits and 15 years for invalidity and survivor benefits. The Convention, however, permits another alternative, which provides a somewhat lower benefit rate if a shorter qualifying period is established (for example, 10 years of contributions for old-age and 5 years for invalidity and survivor benefits). From a cost standpoint the latter alternative might compare favorably with the former, since the increased cost of the shorter qualifying period might offset the lower cost of the smaller benefit rate.

The new alternative is highly desirable since it permits countries that make their program effective in a relatively short time to pay lower benefits and thus begin operations quickly. It seems much sounder that a country should have lower benefits and actually pay them soon than to promise higher but long-deferred amounts so that the solution to the problem is greatly postponed. The modern trend in social security is away from strict individual equity and toward social adequacy;¹³ it is considered preferable to pay benefits relatively soon after the system begins rather than to plan larger payments that might be long deferred and that might never materialize for one reason or another.

Of the first two bases, one would relate the percentages to individual average earnings but permit earnings in excess of a prescribed maximum—the earnings rate of a typical skilled male worker in the country's largest industry—to be disregarded. This criterion has three alternatives—the earnings of (a) a fitter or turner in the manufacture of nonelectrical machinery; (b) a person whose earnings are equal to or greater than those

¹³ For a discussion of the relative advantages of the social adequacy approach in social insurance, see Reinhard A. Hohaas, "Equity, Adequacy, and Related Factors in Old Age Security," *The Record*, American Institute of Actuaries, June 1938, pp. 82–86.

of 75 percent of the covered persons; and (c) a person whose earnings are equal to 125 percent of the average of all persons protected. The latter two alternatives are based on the earnings of both male and female workers and on total earnings without regard to any maximum cut-offs. They have the great advantage for some systems, such as those in the United States, that the calculations can be made directly from the statistical data flowing from the program.

The basis described above is used in the old-age and survivors insurance program of the United States. Benefits are based on an average wage, with earnings in excess of \$3,600 a year excluded. The maximum earnings rate of a typical skilled male worker, as defined above, would be about \$2,900 a year on the basis of 1951 wages. The provision in the Convention does not require that the actual earnings cut-off should be equal to the prescribed earnings rate. If the actual cut-off is higher, then the benefit rates are to be measured for the prescribed earnings. On the other hand, if the actual cut-off is lower than the prescribed earnings, then the maximum benefit (which will be based on the actual cut-off) must be measured against the prescribed earnings.

There is no requirement in the Convention that there be any minimum provisions or any weighting in the benefit formula so that lower-paid workers receive relatively larger benefits than higher-paid workers. Rather, for old-age benefits with a 10-year qualifying requirement the Convention calls for a fixed benefit rate of 30 percent of the average wage when both man and wife are over the minimum pensionable age. Under the United States program, if the average monthly wage is \$100 or less, the benefit for a married couple when the wife is eligible amounts to 80 percent of the average wage (and even more when the minimum benefit provisions apply). At the other extreme, when the average monthly wage is the \$300 maximum, the combined benefit for husband and wife represents 43 percent of the average wage. As indicated previously, in systems that prescribe the maximum amount of earnings to be considered,

the benefit requirement must be met for all wages up to the earnings of a typical skilled male worker and need not necessarily be met for higher amounts. Since for the United States the resulting figure is about \$2,900 per year, only the benefit rate for this figure need be considered, and it turns out to be 47 percent. Accordingly, this provision of the Convention is quite readily met by the old-age and survivors insurance system of the United States.

Similarly, the requirement for survivor benefits with a 5-year qualifying requirement—a 30-percent benefit for a widow and two children—is more than met by the corresponding figures for the old-age and survivors insurance system. The benefits range from 80 percent of the average wage for the lower-paid insured persons down to 56 percent for those with maximum creditable earnings; based on the earnings rate of a typical skilled male worker (\$2,900 per year), the corresponding figure is 63 percent.

Flat-rate benefits are involved in the other basis that uses the benefit percentages. The size of these benefits is fixed at a given percentage of the earnings of a typical unskilled male worker. This basis would be used as a measuring stick to determine the conformity of a plan such as that in Great Britain; under the old-age pension legislation recently enacted,¹⁴ an eligible husband with dependent wife (age 65 and 60, respectively) receives 54s., or £2.7, a week. This amount is about 50 percent of the average wage of an unskilled male laborer in Great Britain (about £5½ a week); it is thus well above the minimum standard (40 percent) that apparently is applicable for this particular plan. If a flat-rate benefit system were in effect in the United States, to conform with the requirement of the Convention the combined benefit for husband and wife would have to be at least \$12 a week, or \$52 a month.¹⁵

¹⁴ National Insurance Act, 1952 (ch. 29), assented to June 26, 1952; the benefit provisions became fully effective in September 1952.

¹⁵ Based on a 40-hour workweek and an assumed wage for an unskilled worker of \$1 per hour, which is well above the minimum wage of 75 cents per hour in the Fair Labor Standards Act.

The third basis for the amount of cash benefits applies only to social (public) assistance plans covering all residents. Under this basis the benefit must be determined according to a fixed scale, but it may be reduced to the extent by which the means of the family exceed a prescribed substantial amount. There is the further limitation, however, that the total amount of the benefit and any means taken into consideration must be sufficient to maintain the family in health and decency and must not be less than the amount of benefit determined when the second basis is used.

Under a social assistance system (with a means test) providing sickness, old-age, invalidity, or survivor benefits, lower benefits can be paid if the aggregate disbursements are at least 30 percent higher than they would have been under an insurance system covering 20 percent of the population and providing flat benefits at the minimum rates stipulated in the Convention. The purpose of this provision, in general, is to permit greater leeway for plans having a broad coverage with benefits perhaps relatively low individually but sizable in the aggregate.

The New Zealand system, under which an eligible husband and wife aged 60 receive a weekly pension of £5¼, is a typical example of a system of this kind. The benefit may be reduced by receipt of income above a certain amount, but such assets as the home and its furnishings, other assets up to £1,000, and weekly income of £1½ or less are disregarded.¹⁶ When living costs and the standard of living in New Zealand are considered, the total of the benefit and any means taken into account is far more than sufficient for maintenance of health and decency and is well above 40 percent¹⁷ of the earnings of an unskilled male worker, which amount to approximately £8 per week.

¹⁶ There is a further exemption of £1½ in respect to a woman's earnings in private domestic service and an additional ½ pound in income is exempt after age 65 for each year of deferment beyond age 60 (but before age 65) in filing claim.

¹⁷ The higher rate is required because the qualifying period is 20 years of residence.

Exceptions for Underdeveloped Countries

A number of temporary exceptions are permitted for countries whose economy and medical facilities are insufficiently developed. The Member Nation itself determines the exception; as long as it wishes to use the exception, it must so state in its annual report.¹⁸ The coverage requirements particularly are modified for underdeveloped countries so that they can begin their social security programs by covering only certain groups of employees in moderate-sized and large work establishments.

Individual Sharing in Cost of Medical Benefits

The insured individual may be required to share in the cost of the various medical care benefits that he receives, provided that this payment does not involve hardship. Thus, a system could require that the insured person pay the entire cost of inexpensive prescriptions. Such a procedure, of course, might be advisable to prevent abuse and to eliminate costly administrative procedures in connection with relatively small financial expenditures that could readily be borne by the insured person. Cost sharing is not permitted with respect to maternity and to employment injury benefits.

Financing Aggregate Costs

The Convention includes general provisions on financing. The method adopted must avoid hardship for low-income persons, and any specific method must be determined in the light of the economic and financial situation of both the country and the persons covered. With respect to compulsory insurance systems, the insured employees shall not be required to contribute more than half the financial resources allocated to the system. For satisfying this condition the operation of several branches can be considered in combination, except that the family benefit and employment injury benefit branches cannot be used for this pur-

¹⁸ In the Convention as developed by the Committee, a 10-year maximum period was placed on the use of this exception by any country, but this provision was deleted in the Plenary Session.

pose. The Government shall accept general responsibility for payment of the benefits provided in compliance with the Convention, including those under any voluntary plan used as a basis for ratification. Specifically, the Government is to make actuarial studies and calculations as to the financial equilibrium of the system, both periodically and before any change in benefits or contribution rates is made.

Right of Appeal

There are included in the Convention certain minimum provisions granting the right to appeal, with special independent tribunals.

Voluntary Insurance Systems

All branches except employment injury and family benefits and the periodical payments of the maternity branch may be ratified on the basis of a voluntary insurance system that is supervised by the government authorities. Voluntary plans that are administered jointly by employers and workers without public supervision may likewise be used, provided they meet established, national standards. In both instances, the various requirements described previously must be met. Further, the voluntary system must cover in the aggregate a substantial part of the workers whose earnings are less than those of a typical skilled male worker.

The provisions placing voluntary insurance on an equal footing with compulsory Government programs were wholly satisfactory to the United States Government, and the first major point it had raised was satisfied. It is abundantly clear that voluntary private insurance will not be adversely affected by the provisions of the Convention.

Treatment of Aliens

This subject was given a thorough discussion because of the difficult problems involved for the many countries having considerable in-and-out migration on a fairly continuous basis. In principle, there was agreement that alien residents should receive the same treatment as citizens. In practice, however, certain exceptions seemed necessary.

For systems financed wholly or principally from general funds, special rules may be applied to resident aliens and naturalized citizens. For contributory systems applicable to employees, equality of treatment of aliens may be conditioned on ratification of the corresponding branch by the alien's country as well as on the existence of a reciprocity agreement between the countries involved.

The problem could not be fully solved in this Convention. Accordingly, the Committee recommended the adoption of a Resolution inviting the Governing Body "to consider any appropriate measures for the establishment of an international instrument which would deal with the situation of aliens and migrant workers in the field of social security." This Resolution was adopted at the Plenary Session with only one adverse vote.

Federal Government Clause

As indicated previously, the United States Government was strongly opposed to the special clause for Federal States that had been included in all previous drafts of the instrument. After a full presentation of the United States Government position, the Committee deleted this clause—the third major point raised by the United States Government—by an almost unanimous vote.

Exclusion of Seamen

The Convention does not apply to seamen or seafishermen since provisions for their protection have previously been made in special Conventions.¹⁹ Therefore, in determining whether the required coverage is present for the various branches, such persons may be excluded from the total number of residents or employees used as the base.

Positions of the Employers and the Workers

The employer members took a position against any action leading to a Convention. They believed that there should be a general Recommendation covering the entire subject. This group also believed that the considerations should not extend

¹⁹ Social Security (Seafarers) Convention, 1946, and Seafarers' Pensions Convention, 1946.

to plans covering the entire population, or even to gainfully occupied persons other than employees, since such consideration would be beyond the competence of the Organization.

The worker representatives were satisfied, on the whole, with the text under consideration by the Conference but were willing to make a number of compromises desired by the other groups. They felt strongly, however, that the instrument should be a Convention.

Operation of Convention

After a Convention is adopted by the International Labor Organization, it is transmitted to the various Member countries. It is then open to ratification by such countries as may desire to take such action. The Convention comes into force 1 year after the date on which ratifications of two Members have been received. For subsequent Members ratifying, it comes into force 1 year after the date of receipt of ratification. After the Convention has been in force for 10 years for a particular Member, the Member may denounce the Convention in whole or in part. If such action is not taken in this eleventh year, the Convention remains in force for another period of 10 years. The Convention has no binding effect on any country until ratified by it, and no country is obligated to ratify. Furthermore, ratification on the basis of several of the nine branches does not imply any obligation to put into force in the future the remainder of the branches.

During the course of Conference negotiations at which the final text is developed, the United States Government delegation, before voting on the final text, forms tentative conclusions concerning the general provisions of the proposed Convention—especially as to its suitability for Federal action or, in whole or in part, for State action. These tentative con-

clusions are based on instructions and guidance formulated before the Conference by the various departments and agencies of the Federal Government. Although the agencies have made a careful analysis of the proposed text, they can make a much more thorough examination of the matter on the basis of the final text after the Conference is over.

Any new Convention adopted by the International Labor Conference undergoes thorough study by all interested departments and agencies of the Executive branch of the Federal Government. Recommendations to the President are then developed as to whether the subject involved should be handled as a Federal matter or whether it is in whole or in part appropriate for action by the several States. In the latter case the Convention is submitted to the States for their information and consideration (and also to the Territories). A Convention deemed appropriate solely for Federal action is submitted by the President to the Senate for its advice and consent as to ratification²⁰ if he recommends such action, or for its information if he believes it to be inappropriate for ratification. At the same time the President may make recommendations to both Houses of Congress for any legislative action implementing or conforming with the Convention.

It appears highly probable that part of the Convention on Minimum Standards of Social Security deals with matters appropriate for action by the several States. Furthermore, considering existing programs that are on the Federal level, it would appear that at this time only two branches—old-age and survivor benefits—meet the requirements for ratification, whereas the Convention re-

²⁰ Technically, the President ratifies the Convention on his own volition after he has had approval by a two-thirds vote of the Senate (based on members present).

quires three branches. Accordingly, ratification would not be appropriate without legislative action by both Houses of Congress on one of the other branches.

Advanced Standards

At the 1951 Conference, consideration was to be given to both minimum standards of social security and advanced standards of social security. There was insufficient time to consider the latter so that it was placed on the agenda of the 1952 Conference for a first consideration. For this purpose the Office prepared a report²¹ setting forth a preliminary draft of an instrument, which was cast in the form of a Convention.

At the 1952 Conference, time did not allow the Committee on Social Security to take up this subject. The Committee discussed what further consideration might be given to it and submitted a supplementary report containing three proposals for draft Resolutions.

The employer members were opposed to having an advanced standard, holding that it would be incompatible with the customary procedure of having specific and comparable international obligations. The worker representatives, on the other hand, believed strongly that there should be an instrument dealing with advanced standards and that the subject should be placed on the agenda of next year's Conference for a first discussion. After considerable debate, the Plenary Session adopted virtually unanimously (with only 1 vote against) a Resolution inviting the Governing Body "to reexamine the question of objectives and advanced standards of social security and to choose an appropriate time for placing it on the agenda."

²¹ Report V(b): *Objectives and Advanced Standards of Social Security*, International Labor Conference, 35th Session, 1952 (ILO, 1952).