

# New International Instruments on Invalidity, Old-Age, and Survivors Pensions

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ON JUNE 29, 1967, the 51st International Labor Conference, meeting in Geneva, Switzerland, adopted two new international instruments on invalidity, old-age, and survivors pensions. One of these instruments, a Convention, establishes new international standards for the pension systems of Member countries of the International Labor Organization and is now open to ratification by these countries. The other instrument, a Recommendation, suggests additional standards to Member countries for eventual application to their pension systems. At the beginning of 1967, 120 countries had some form of government social security program; 92 of these—all but 4 which are ILO members—had programs in the fields of invalidity, old-age, or survivors benefits.<sup>1</sup>

The adoption of these two instruments was the culmination of discussions begun at the 50th International Labor Conference in 1966. It was also the completion of the second stage of a program of revision by the Conference of earlier and somewhat outdated instruments in the social security field. The first stage was completed in 1964 with the adoption of instruments dealing with benefits for employment injury. The third stage, which is already under way, looks toward the revision of existing instruments dealing with sickness benefits including cash and medical care.

Following the 50th International Labor Conference, in 1966, an article appeared in the *BULLETIN* concerning the program of revision undertaken by the Conference, the procedures of the Conference with respect to the adoption of Conventions and Recommendations, the significance of the instruments adopted, and a review of the issues that were discussed by the Social Security Committee of the 50th Conference in connection with the instruments that were finally adopted by the 51st Conference this year.<sup>2</sup>

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<sup>1</sup> Social Security Administration, *Social Security Programs Throughout the World*, 1967.

<sup>2</sup> Robert J. Myers and William M. Yoffee, "Social Security Issues: Fiftieth International Labor Conference," *Social Security Bulletin*, November 1966.

As in 1966, the issues involved in the instruments finally adopted were discussed first by the Social Security Committee, appointed by the Conference for this purpose.<sup>3</sup> Two separate reports, one on the Convention and one on the Recommendation, together with drafts of both instruments were submitted by the Committee to the Conference and were adopted by the Conference without change.<sup>4</sup>

## Discussions of the Social Security Committee

Considering the number of issues on which there were sharp differences in the Social Security Committee in 1966 and which seemed to have been left essentially unresolved, there were relatively few that stimulated such differences in 1967. Most of the Committee's time was devoted to arriving at agreement on technical problems. Two major issues that were carried over from last year were: (1) whether or not separate ratification of the Convention should be permitted for the agricultural sector and (2) to what degree the workers should participate in the management of publicly regulated social security institutions. One question that seemed to have been resolved satisfactorily in 1966—the question of retirement

<sup>3</sup> In keeping with the tripartite character of the Conference, 60 Governments were represented on the Committee along with 21 employer representatives and 32 worker representatives, with equal voting strength for each group. The United States Government was represented by the author; the United States Workers by Matthew Guinan, President, Transport Workers Union of America; and the United States Employers by Robert S. Lane, Counsel, Mobil Oil Corporation.

<sup>4</sup> The Reports and the Instruments referred to appear in the Provisional Record of the Conference as follows: First Report of the Social Security Committee on the Convention, Appendix, Part 34; Second Report of the Social Security Committee on the Recommendation, Appendix, Part 37; Text of Draft Convention as finally adopted, Appendix, Part 45; Text of Draft Recommendation as finally adopted, Appendix, Part 48. The discussion and votes on the Committee Reports and Instruments before the Conference appear in the Provisional Record, Part 47, pages 436-446, and Part 49, page 449. The final record votes on the adoption of the two instruments appear in the Provisional Record, Part 50, pages 485, 486, and 494-498.

age in general and for workers in arduous and unhealthy occupations—also assumed some importance this year.

There were several reasons for the small number of major issues discussed by the Committee in 1967. A number of issues had been resolved by a consensus of the Member countries in their comments on the report of the Committee in 1966.<sup>5</sup> In addition, greater efforts were made to work out compromises on most of the remaining issues through working parties made up of Members representing the various viewpoints, and this approach proved very effective.

### **PROVISIONS OF THE NEW CONVENTION AND RECOMMENDATION**

The provisions of the new Convention and Recommendation relate to social security benefits in the event of three contingencies: invalidity (known in the United States as total disability) old-age, and survivorship (including loss of support upon the death of the family breadwinner). The standards for each type of benefit deal with how the contingency is to be defined, the allowable qualifying periods for full and reduced benefits, the size of the full benefits, and supplements to them if any. The standards common to all three contingencies deal with the extent to which the population must be protected by the benefit system, adjustments that may be made in benefit payments or entitlements, and the measures that must be taken to protect the rights of claimants under the benefit systems.<sup>6</sup>

### **INVALIDITY BENEFIT STANDARDS**

The Convention defines invalidity as the “in-

<sup>5</sup> See Report IV (2), International Labor Conference, Fifty-first Session, “Revision of Conventions Nos. 35–40 concerning Old-Age, Invalidity and Survivors’ Pensions,” Geneva (1967).

<sup>6</sup> The obligations of ILO Members with regard to Conventions and Recommendations adopted by the Conference are described in Article 19, paragraphs 5 and 6, of the ILO Constitution. All Members are obliged to bring both instruments to the attention of competent authorities for appropriate action. In the case of a Convention such action would ordinarily be enactment of conforming legislation or ratification by a legislative body. If ratification is not achieved, the Member has no further obligation except to report periodically to the ILO on the status of its national law and practice in relation to the unratified Convention.

capacity to engage in any gainful activity to an extent prescribed, which is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.” The Recommendation suggests that this definition should eventually be liberalized to take into account incapacity to engage in an activity involving only substantial gain.

The basic standards in the Convention for qualifying periods in the case of invalidity require that a full standard invalidity benefit must be payable if a person has made 15 years of contributions, has served 15 years in covered employment, or, in systems based on residence, has resided in the country for 10 years. In lieu of this condition a system that protects the economically active population may require a minimum of 3 years’ contributions plus a yearly average number or yearly number of contributions. Reduced invalidity benefits must be payable if a person has at least 5 years of contributions, employment, or residence, or, for systems that protect the economically active population, a minimum of 3 years’ contributions, plus half the yearly average number or yearly number of contributions required for full benefits. The Recommendation suggests that the maximum requirement for full benefits eventually should be reduced to 5 years of contributions, employment, or residence, and that it should be reduced below what it otherwise would be, or eliminated altogether, for young workers under a prescribed age or for persons whose invalidity results from an accident.

The Convention also provides three alternatives to the standard qualifying periods in the case of invalidity. It provides that where the maximum requirement for full benefits is altogether 5 years or less, the standard benefit may be reduced up to 10 percentage points. The necessity of providing other reduced benefits would thus be eliminated. The Convention also provides that where the qualifying period for full standard benefits is between 5 and 15 years of contribution or employment, or between 5 and 10 years of residence a proportional reduction in the standard benefit may be made within a range of 10 percentage points. Under this alternative a further reduced benefit must be paid. Finally, if the maximum qualifying period is not more than 5 years at a minimum age and rises with

advancing age to a higher fixed maximum number of years determined by national legislation, a standard benefit paid under such conditions satisfies the qualifying conditions for both full and reduced benefits. In all cases for invalidity, under the basic standards and under the alternatives, the national law may require that the qualifying period must be met within a specified period of time before the contingency occurs, or in other words it may be used as a test of recent connection with the active labor force.

The purpose of the alternatives is to add flexibility to the basic standards of the Convention and to fit the requirements of various types of systems. Systems with qualifying periods of fixed lengths or fixed current qualifying periods would have to meet the basic standards, and pay full and reduced benefits. Systems that have exceptionally small fixed qualifying periods in comparison to the basic standards are permitted to pay smaller benefits. Those systems whose qualifying periods are not so small but nevertheless smaller than the basic standards may pay a proportionately smaller full benefit but also must pay a reduced benefit in accordance with the basic standards. Systems with a small qualifying period at a low age that increases with age, for the most part, either increase the benefit as the qualifying period increases or do not tie the benefit directly to the length of the qualifying period, and so are required to provide the benefit—presumably a full benefit—payable at a given age.

The standard invalidity benefit is 50 percent of previous earnings, which are computed in a manner provided by the Convention, for a man, his wife, and two children. This benefit may be reduced to as low as 40 percent if the required qualifying period is 5 years or less, or it may vary between 40 and 50 percent if the qualifying period is between 5 and 15 years of contributions or employment or between 5 and 10 years of residence. In addition to cash benefits the Convention provides that economically advanced countries should provide rehabilitation and job placement services to disabled beneficiaries.

The Recommendation suggests that the percentage of previous earnings represented by the cash benefit should eventually be increased from 50 to 60 percent. It also suggests that a reduced benefit be made payable for partial invalidity.

## OLD-AGE BENEFIT STANDARDS

The Convention defines the contingency of old age as survival beyond a specified pensionable age, but ordinarily the age may not be higher than age 65. It takes into account, however, the possibility that conditions may exist in some countries now or in the future that would make it necessary or desirable to raise the pensionable age above 65. Such an increase is possible if it can be demonstrated statistically that it is justified on the basis of certain demographic, economic, and social criteria. If there were an exceptionally high proportion of old people in the working population this might be an acceptable demographic criterion. If a lower pensionable age would unreasonably increase the cost of social security as a percentage of national income, this might be an acceptable economic criterion. If there were especially good employment opportunities for people over 65, this might be an acceptable social criterion. Where a country has a very short work week or requires very long vacation periods as compared to other countries, this might fit any of the criteria.

The Convention also provides that if a country's pensionable age is 65 or higher, and its social security laws deem certain occupations to be arduous and unhealthy, the pensionable age for these occupations should be lower than the normal one. The Recommendation goes even further by suggesting that eventually lower-than-normal pensionable ages, or pensions through other means, should be provided for persons deemed unfit for work, for persons involuntarily unemployed for a prescribed period, or for other justifiable social reasons.

The maximum qualifying period provided under the Convention for full old-age benefits is 30 years of contributions or employment or 20 years of residence or, in the case of systems covering the economically active population, a prescribed minimum period of contributions and a yearly average number. For reduced benefits the maximum period provided is 15 years of contributions, employment, or residence or, in the case of systems covering the economically active population, the prescribed minimum period of contributions and half the yearly average provided for full benefits. The Recommendation suggests lowering the maximum period for full

benefits eventually to 20 years of contributions or employment or 15 years residence, and the period for reduced benefits to 10 years of contributions, employment, or residence.

The two alternative old-age benefit qualifying periods are the same as the first and second alternatives for invalidity benefits, except for the number of years. In the first alternative for old age, a 10-percent reduction in the benefit is possible if the period for full benefits is no more than 10 years of contributions or employment or 5 years of residence. In the second alternative for old age, a proportional reduction within a 10 percent range is possible if the qualifying period is between 15 and 30 years of contributions or employment or between 5 and 20 years of residence. A reduced benefit is payable under the second alternative if the period for full benefits exceeds 15 years of contributions or employment. The third alternative provided for invalidity benefits is omitted for old age because such an alternative is not usually necessary when the advent of the contingency is predictable, as it is in old age.

The Recommendation suggests that a reduced old-age benefit should be payable to a person who was too old to qualify for full benefits when the system was initiated, unless he can qualify for full benefits on the basis of lower-than-normal alternative requirements at a higher-than-normal pensionable age.

The standard old-age benefit provided by the Convention is 45 percent of previous earnings for a man and his wife both of pensionable age, but may be reduced to 35 percent or reduced proportionally between 35 percent and 45 percent, if one of the two alternative qualifying periods is required as just outlined. The Recommendation suggests that the standard benefit eventually be increased from 45 to 55 percent and that an old-age benefit based on a minimum period of contributions or employment eventually be increased by special increments if retirement is deferred or the filing of a claim is deferred past normal pensionable age.

## **SURVIVORS BENEFIT STANDARDS**

The Convention defines the survivorship contingency as loss of support to a widow or child as a

result of the breadwinner's death. A widow must be entitled to receive a benefit if she has reached pensionable age, if she is disabled, or if she is caring for a child who was dependent on the deceased. A childless widow may be required to have been married to the deceased for a minimum period in addition to the other requirements. An otherwise qualified surviving child must be entitled to receive a benefit if he is under school-leaving age or under age 15, whichever of the two ages is higher, or if he is between that age and a specified higher age and is disabled or a student or apprentice. The Recommendation suggests that eventually invalid dependent widowers should be afforded the same entitlement as widows.

The basic and alternative qualifying periods for the breadwinner to secure survivor protection for his wife and children are exactly the same as for invalidity benefits. A qualifying period of residence by the widow, however, may be permitted in lieu of one for the breadwinner. As it does in the case of invalidity, the Recommendation suggests that the qualifying period for survivors benefits eventually should be reduced to a maximum of 5 years of contributions, employment, or residence.

The standard benefit for survivors under the Convention is 45 percent of the breadwinner's previous earnings for a widow and two surviving children. This benefit may be reduced to 35 percent if the maximum qualifying period for full benefits is 5 years or less, or proportionally reduced between 35 and 45 percent if the qualifying period for full benefits is between 5 and 15 years of contributions or employment or between 5 and 10 years of residence. Other periodic benefits paid to qualified survivors may be substituted for the usual survivor benefits. The Recommendation suggests that eventually the benefit should be increased from 45 percent to 55 percent and also that eventually widows not qualified for periodic benefits should be given training and placement facilities to make them self-sufficient, as well as a readjustment allowance for a limited period or a lump-sum benefit.

Several paragraphs of the Recommendation suggest eventual modification of the standards for qualifying periods and benefits for each of the three contingencies. One suggests that periods of nonwork due to sickness, accident, maternity, in-

voluntary unemployment and military service should be included in periods of contribution or employment. Another suggests that there should be a fixed minimum benefit to assure a minimum standard living. Still another suggests that additional benefits should be paid to beneficiaries who need constant help or attendance.

## COMMON PROVISIONS

A number of the standards in the Convention and a number of paragraphs in the Recommendation relate to all three contingencies. Generally, these fall into the categories of extent to which the population must be protected and adjustments in benefit payment or entitlement.

### Extent of Protection

The Convention provides three possible alternative standards on the extent to which the population should be protected for each of the three contingencies. The first two of the three represent significant advances over Convention No. 102 on Minimum Standard for Social Security, adopted in 1952.

The first alternative requires protection of all employees, though the effect of this requirement is reduced to some extent by the permanent exceptions that are possible. It represents, nevertheless, an increase over the 50-percent requirement, with no exceptions, in Convention No. 102. The permanent exceptions include persons whose employment is of a casual nature or who, in other words, do not work long enough or for high enough pay to be considered dependent on their work for a living. Also excepted are members of the employer's family living in his household with respect to their work for him—cases in which abuses cannot be detected without invading family privacy. The Recommendation suggests eventual extension of protection to casual workers. Finally a residual category of classes of employees may be excluded from protection provided their number does not exceed 10 percent of all employees other than those excluded by the first two exceptions.

A temporary exception is provided for certain agricultural workers under benefit systems covering only employees. This exception was provided

for in place of the possibility of separate ratification for the agricultural sector and was perhaps the most important new provision of the entire Convention. The provision will be discussed in more detail in connection with the several possibilities for ratification.

The second alternative requires protection for 75 percent of the economically active population—employees and self-employed persons. Under Convention No. 102, only that part of the economically active population equal to 20 percent of all residents had to be protected under a similar alternative. The Recommendation suggests that eventually protection under every system should be extended to all economically active persons.

The third alternative requires protection for all residents or all residents whose means during the contingency do not exceed prescribed limits.

Under all three alternatives, seafarers—including sea fishermen—and public servants may be excluded in determining the relevant percentages if they are protected under equivalent special schemes.

### Benefit Adjustments

The Convention requires that benefit rates be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living. The Recommendation suggests that eventually benefits should be adjusted periodically on account of such changes.

The Convention permits suspension of payments on account of work or reduction of payments on account of earnings, but in the case of the latter, the amount of the permitted reduction is limited under contributory systems to the amount of the earnings. The Recommendation suggests that eventually suspensions be eliminated.

The Convention also permits suspension of benefits, either payment or entitlement in a number of instances, all but one of which refer generally to the beneficiary's conduct in relation to the cause of the contingency or during its continuation. The exception is that suspension is permitted while he is outside the territory of the Member. In this case, contributory systems must nevertheless make some provisions under which persons living abroad may receive their

benefit or a portion of it. The Recommendation suggests that eventually this cause of suspension be eliminated.

Finally the Convention permits benefits to be offset by the amount of another social security benefit.

## **PROTECTION OF BENEFICIARY RIGHTS**

The Convention contains four requirements for protection of the rights of beneficiaries. First, the rights to benefits in the course of acquisition must be maintained even though there is an interruption in the process of acquisition. Second, a dissatisfied claimant must be given the right of appeal to an unsatisfactory decision in his case and have the right of qualified third party representation in such an appeal. Third, protected persons must be represented in the management of a contributory system that is not under government supervision. Finally a Member country that ratifies must accept responsibility for assuring compliance of its systems with the Convention, assume general responsibility for seeing that benefits are paid, and accept general responsibility for proper administration of the systems.

## **RATIFICATION**

Perhaps the most unusual aspect of the Convention is the number of levels of development of social security at which ratification of the instrument is possible. Previous instruments, for the most part, contemplate ratification at a level where the social security system just meets the standards provided. Some recent instruments such as Convention No. 102 and No. 121 on Employment Injury Benefits also contemplate ratification, with temporary exceptions to the extent of protection provided, if a country declares itself to have an insufficiently developed economy.<sup>7</sup>

<sup>7</sup> This and other alternatives to normal ratification are in conformity with the ILO Constitution, Article 19, paragraph 3, which states: "In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries."

From the standpoint of the possibilities of ratification, the Convention may be said to take into account four possible levels of social security development. At each level there are provisions in the Convention that encourage further development and, after the highest level contemplated by the Convention is achieved, there remain to be implemented the measures suggested by the Recommendation.

### **Normal Ratification**

Normal ratification consists of ratification on the basis of full compliance with the standards for one, two, or all three of the contingencies. If a Member ratifies for less than all of them, the Convention provides the possibility of subsequent ratification for the others. Ratification for any of the contingencies means that the Member is automatically deemed to have met the requirements under Convention No. 102 for the same contingency, if it has not already done so, and facilitates ratification of that Convention as well, as soon as three of its nine substantive parts—including at least one related to invalidity, old-age, survivors, unemployment, or employment injury benefits—are complied with.

### **Ratification for Developing Countries**

A Member country whose economy is insufficiently developed, if it makes a declaration to this effect, may ratify for any of the three contingencies on the basis of full compliance except for the extent of the population protected. For a given contingency such countries need only protect 25 percent of all employees or 50 percent of all employees in industrial undertakings. A country ratifying on this basis, until it renounces the declaration, must agree to report regularly to the ILO that its reason for making the declaration continues to exist. It also agrees to increase the number of protected employees as circumstances permit. Countries that make the declaration with respect to ratification for invalidity benefits are also relieved of the requirement of providing rehabilitation and job placement services for the disabled.

### **Ratification With Temporary Exception for Agricultural Employees**

A third avenue to ratification is open to Member countries who have well-developed benefit systems for industrial employees but have not yet extended them to agricultural employees. It is not open to countries whose systems cover the economically active population or residents. This exception was introduced in place of the possibility of separate ratification of the Convention for industrial and agricultural sectors.

The idea of separate ratification grew out of the fact that this Convention was conceived as the revision of six conventions adopted by the ILO in 1933. Those Conventions—No. 35, Old-Age Insurance (Industry); No. 36, Old-Age Insurance (Agriculture); No. 37, Invalidity Insurance (Industry); No. 38, Invalidity Insurance (Agriculture); No. 39, Survivors Insurance (Industry); and No. 40 Survivors Insurance (Agriculture)—are considered out of date now as a result of developments in social security that have taken place since World War II. A number of social security Conventions and Recommendations have been adopted since Conventions 35–40 that do not distinguish between the two sectors, including the two more recent ones that served as a model for this one—Conventions No. 102 and No. 121.

The use of the temporary exception was considered more acceptable than separate ratification for several reasons. It takes account of the problems some countries still have in extending social security coverage to agricultural workers—problems of financing, problems of administration and problems of communication, for example. Yet it does not imply inequality between the industrial and agricultural sectors and does not revert to the concept of two separate and distinct sectors of employment that has been omitted from the recent instruments. Above all, the exception is regarded as strictly temporary.

Under this method of ratification, a Member may temporarily exempt that part of its agricultural working population that has no protection at all from the percentages required by the Convention. Those agricultural workers that already have protection must be protected to the extent required under the Convention's standards and included in determining the percentages. A Member making the exception must report regularly

to the ILO on what it is currently doing and what it proposes to do to give its unprotected agricultural workers the necessary protection as provided for in the Convention. Where it has failed to make any progress in this direction it must furnish an appropriate explanation. It must also undertake to increase the number of fully protected agricultural workers to the extent and with the speed that circumstances permit. Ratification on this basis does not, however, carry with it the automatic compliance with the comparable parts of Convention No. 102 that would be possible otherwise.

### **Ratification Through Higher Overall Protection**

The fourth avenue to ratification is open to those countries that provide a higher overall level of protection than is required by the Convention. Though normal ratification permits complete compliance with the standards for only one contingency, ratification on this basis requires substantial compliance with the standards for all three. It also requires that either 85 percent of the economically active population—compared with the usual 75 percent—or all residents be protected. If then, on the one hand, the standard benefits for two of the contingencies exceed those required by the Convention by at least 5 percentage points, certain specific provisions for invalidity and survivors benefits may be met differently. If the provisions involve who may be beneficiaries, the total number of beneficiaries may not fall short of what it would otherwise be.

If, on the other hand, the total benefits provided for each contingency are at least 110 percent of what they would be if all the precise requirements of the Convention were met, then any of the substantive provisions related to each of the contingencies may be met differently.

This avenue to ratification takes account of the fact that some countries, with highly developed benefit systems, may place emphasis on different aspects of a given contingency than does the Convention for purposes of meeting their own citizens' needs or may, in a single program for all three contingencies, place more emphasis on meeting their citizens' needs under one contingency than under the others and still on the whole exceed the level of protection contem-

plated by the Convention. Such countries are still required to report to the ILO what efforts are being made to bring their systems into line with the provisions of the Convention that they have not met.

If a country does not have compulsory benefit programs for one or more of the three contingencies it may take account of noncompulsory programs in determining its compliance with the Convention for purposes of ratification. Such programs must however be administered by public authorities, or by employers and workers jointly, in accordance with legally prescribed standards. They must also cover a substantial part of the working population whose earnings are below a level determined under the Convention and must comply with all relevant provisions of the Convention. This provision tends to add even more flexibility to the provisions for ratification than has already been cited.

#### **EVALUATION OF THE NEW INSTRUMENTS**

In contrast to earlier instruments, such as Conventions 35-40 and Convention 102, the new Convention has achieved great flexibility. It has done so without compromising on principles, but it takes into account, as far as possible, the wide variation of national practices that exist in national pension schemes and it takes into account at least four possible levels of national economic and social development. Ratification of the Convention is possible at any of the four levels, with encouragements for a Member of advance from one level to the next. For Members at the highest level, the Recommendation provides a still higher objective, a fifth level, to be achieved sometime in the future. Finally, the standards adopted on the whole exceed the minimum standards of social security that were adopted by Convention No. 102 in 1952, by taking into account many of the developments in pension systems that have taken place in the intervening 15 years.

The specific principles that may be said to be contained in the Convention and Recommendation are not always stated in so many words. The technical provisions as interpreted by the decisions of the Social Security Committee, however, clearly and consistently reflect their presence.

#### **Equality of All Workers**

Perhaps the most important principle in the instruments is that all workers must be given equal treatment under national pension systems regardless of their sectors of activity or sex. This principle is reflected most clearly in the Committee's decision to reverse its action in 1966 and to eliminate the possibility of separate ratification for the industrial and agricultural sectors. The Committee also rejected a proposal for the Convention to require a mandatory lower retirement age for women than for men, and rejected a similar provision proposed for the Recommendation, on the grounds that this would ultimately work to the detriment of women by forcing them to retire earlier than they might have wished.

Even though it adopted a provision for lower retirement age for workers in arduous and unhealthy occupations, the Committee did so in such a way that this would be left to the discretion of the Member Government and would in no case be a required standard where the pensionable age for all persons was already below age 65. The introduction by the Committee of the possibility of an earnings test for invalidity beneficiaries who are working, as well as for survivors and old-age beneficiaries may be considered as a deliberalization of the standards of Convention No. 102, but it may also be viewed as consistent with the principle of equality of treatment.

#### **Sufficiency of Benefits**

The second principle clearly implicit in the Convention and the Recommendation is that benefits should be sufficient to maintain a minimum standard of living without relying on other means.

This principle is evident from the fact that the Committee decided to maintain requirements for higher benefits—as adopted in 1966—than those provided for in Convention No. 102. In contrast to Convention No. 102, which established the three standard benefits at 40 percent, the higher benefits also vary in relation to the presumed need of the standard beneficiary in terms of the number of persons that must be supported by the benefits and the type of contingency

45 percent for two adults in old age, 45 percent



for one adult and two children as survivors, and 50 percent for two adults and two children where one adult is disabled. The requirements for periodic review of the adequacy of benefits have also been strengthened in comparison to Convention No. 102. The requirement that a pension system must provide rehabilitation and job placement services for invalid persons, absent from Convention No. 102, has also been added.

In the Recommendation are incorporated provisions that would lead to further increases in each of the standard benefits by at least 10 percentage points, to fixing minimum benefits for all persons, and to providing special increments if a pensioner needs the constant help or attendance of another person. The Recommendation would also strengthen even further the provision for adjustment of benefits in line with changes in earnings levels or levels in the cost of living.

### **Universal Protection**

The Convention in principle clearly aims at eventual universal protection under pension systems. This principle is evidenced by an increase in the required percentage of coverage in effect to 90 percent of employees or 75 percent of the economically active population from smaller percentages under Convention No. 102. Extension to all economically active persons is contemplated by the Recommendation.

### **Flexibility**

A high degree of flexibility has been built into the Convention. This was necessitated by the fact that, in the earlier instruments, uniform standards written in very general terms tended to have little meaning or effect and those written in highly technical terms tended to exclude systems that failed to conform to the letter of the provision even though they conformed to the spirit.

An example of increased flexibility has already been demonstrated in the maximum qualifying periods. The number of alternative methods of meeting the requirements has been increased from what it was in Convention No. 102. It now becomes possible for systems to meet the require-

ments directly (1) if in the case of any contingency they pay benefits that are a combination of segments for which the qualifying periods are different or computed differently, (2) if in the case of invalidity or survivorship they pay benefits based on a minimum qualifying period at a given age that rises with increasing age, or (3) if in the case of survivorship benefits they provide a residence requirement for the widow instead of the breadwinner. It also becomes possible under the new Convention to require that for invalidity some part of the qualifying period may be used as a recency-of-work test by requiring that it be met within a specified period before the occurrence of the contingency.

It becomes possible if ratification is based on higher overall protection to substitute new categories of survivor beneficiaries for certain other categories as long as total benefits paid do not fall below what they might otherwise be in one case, or the number of beneficiaries does not change in another.

Another important aspect of flexibility is the increased reliance that is placed on provisions of national law to prescribe details. Most standards in the Convention permit national law to have technical variations to suit a country's specific needs or customary methods of administration while remaining in compliance.

As has been indicated, there is also flexibility in the method of ratification. There are four avenues to ratification in the new Convention as compared with the usual two in some previous instruments. And with respect to each avenue to ratification there are alternative though reasonably equivalent choices in how to meet the standards prescribed.

### **ACTION OF THE CONFERENCE**

There was general agreement within the Conference on the desirability of adopting the Convention. Hence, the Committee's First Report on the Convention was adopted without objection. The Recommendation was a highly controversial issue. Some representatives felt that its suggested standards were too far advanced to be realistic and opposed it on that basis. Other representatives felt that insufficient time had been devoted to discussion of the Recommenda-

tion in the Committee and that the instrument was therefore less than the best possible product that could have been developed. Some of these representatives opposed its adoption and others abstained. The initial vote on the Second Report of the Committee on the Recommendation was 157 in favor, 20 against, and 46 abstentions, but since the votes for and against did not constitute a quorum—a majority of the representatives at the Conference entitled to vote—according to the rules of the Conference the Report failed to be adopted.

The President of the Conference, exercising his discretion, called for a record vote on the Second Report at the next sitting. On the record vote it was adopted by 209 votes in favor, 55 against, and 56 abstentions. The United States Government and Worker Delegates voted in favor of the Report, and the United States Employer Delegate voted against it.<sup>8</sup>

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<sup>8</sup>The United States Government Delegates were George L-P Weaver, Assistant Secretary of Labor for International Labor Affairs, and George P. Delaney, Special Assistant to the Secretary of State and Coordinator of International Labor Affairs. The United States Worker Delegate was Rudolph Faupl, International Representative, International Association of Machinists and Aerospace Workers. The United States Employer Delegate was Edwin P. Neilan, Chairman of the Board and President of the Bank of Delaware.

In the record votes on final adoption of the instruments a two-thirds majority of all delegates voting for and against is required for adoption, provided that this constitutes a majority of those entitled to vote. The Convention was adopted, with 240 votes in favor, 5 against, and 59 abstentions. The Recommendation was adopted, with 192 votes in favor, 45 against, and 54 abstentions. On both instruments the United States Government and Worker delegates voted in favor of adoption and the United States Employer Delegate voted against adoption.

## CONCLUSION

The United States Government Delegates supported the adoption of both the Convention and the Recommendation on the grounds that they appeared to represent reasonable and responsible standards for governmental action in the field of pensions. It also appeared to them, subject of course to later confirmation by appropriate legal authorities, that law and practice in the United States on invalidity, old-age, and survivors benefits are in substantial conformity with the provisions of the Convention and with most of the provisions of the Recommendation.