THE INTERNATIONAL DIRECTION OF SOCIAL SECURITY

by

Barry John Moughton

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BARRY JOHN MOUGHTON

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Recent developments in solving social problems have created a new International Law of Social Security. Attempts to control the direction of its development have not produced a clear pattern of principles. Coverage is correctly based on Residence for primary liability and Ordinary Residence for secondary liability. Qualifying Periods are correctly an aspect of Definition which is based on a division into long or short term contingencies and income-decreasing or expenditure-increasing contingencies. Benefit rates are correctly based on earnings and subsistence for the first two categories and assumed average need for the last. Employment Injury is logically anomalous, but a new contingency of Unemployability must logically exist.

Development from Social Assistance through Social Insurance to Income Security leads logically to Capital Security which, on analysis, is a form of State-subvention of damages in the Law of Tort or Delict.

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Chapter 1.

Introduction: 1) "The rich man in his castle,
The poor man at his gate,
God made them, high or lowly
And ordered their estate."
19th Century hymn.

2) "Rules and Institutions do not change men's nature, but they do bring about a change in behaviour towards one another. This is the lesson which civilization has taught us".
M. Jean Monnet.

It is not often that the student of International Law is able to comment on a new branch of that law which is still in the process of creation, and to suggest the principles of development before any irrevocable step has been taken - yet that today is the position in regard to the International Law of Social Security.

A comparison of the quotations set at the beginning of this introduction - the first sung by many church congregations in the nineteenth century; the second spoken by one of the foremost pioneers of international institutions in the mid-twentieth century - discloses the extent to which in the course of a hundred years a laissez-faire conservatism has given birth to a hive of international activity aimed to bring about a change in men's behaviour to one another and to create a changed order for "the poor man at the gate".

One of the products of this international activity is the new International Law of Social Security. The haphazard charity of the rich man for the poor man has given way to the deliberate concern of the community for the accidents which befall its members and has spilled over national boundaries into the field of international action. As always, a new field of action requires a new law to regulate its activity, and gives a fresh opportunity to lawyers to study the techniques by which law must keep abreast of social development.

The aim of the present study is to bring together the existing elements of International law concerning Social Security and to weld them together into a comprehensive and logical international scheme which will not share the defects caused in many branches of law by haphazard growth in its infancy. It may be admitted that this aim seems to smack more of the Sociology of Law associated with the name of Ehrlich than of the more generally accepted views of Kelsen on the pure science of law. On the contrary, however, in the words of G.W.Paton "Although the view of Kelsen that the jurist should not discuss the question of social interests is attractive in that it encourages an impartial jurisprudence, yet such a study is essential to the lawyer to enable him to understand the legal system".

An understanding of this new and growing legal system must be based on a proper appreciation of the root tenets

of the Western theory of liberal democracy - the religious aim of a community in which the individual achieves, both in material and spiritual values, his true deserts - and the philosophical aim (to amend Bentham) of the greatest liberty of the greatest number.

It is in the field of liberty, perhaps, that the progress of the last 100 years has most clearly manifested itself: in the nineteenth century, liberty was construed as referring solely to political and civil liberty: in the twentieth century, the increase in man's knowledge of the economic and social workings of society and the raising of the standard of living of the Western world has brought to the front of the stage the true enemies of liberty - primarily hunger, illness and unemployment: secondarily, political and civil misuse of power - a liberty which, at its highest meaning equates material well-being with contribution to society.

The right to freedom had thus come to include a right to social security. The way in which the Declaration of Human Rights has taken account of the right to Social Security is shown in Appendix "A". But it is important not to be concerned with rights to the exclusion of duties. A right to social security from the community is correlative to the duty to assist in the provision of social security for other members of the community, a duty assumed by the community itself as agent for its individual members.

It is this mechanism of agency delegation by the individual to the community which has seen such great

development during the last century. Individual charity has become public charity (under the term Social Assistance): the development of commercial insurance has pointed the way towards State-sponsored insurance schemes against the contingencies most commonly making charity necessary (Social Insurance): the State sponsorship has become State subsidy, and the element of contribution has become of minor importance as the activities of the State in this field have shown themselves inseparable from general governmental operations (Income Security): finally we are moving towards State responsibility for all undeserved misfortunes by State backing for damages under private law (we may call this Capital Security).

These modern developments have manifested themselves in a number of Conventions and Treaties, of which the most important is the Social Security (Minimum Standards) Convention of 1952. At the commencement of the discussions in preparation for the Convention, high hopes were held that a statement of Objectives and Principles would be made by which the development of national schemes of Social Security might be guided. Unfortunately, as the debates proceeded the element of 'objectives' seems to have been diminished, so that an opportunity to establish basic principles has been lost. The analysis that follows will clearly show the manner in which conflicting principles are likely to lead the International Law of Social Security into even greater complexity and disorder.

The problem of defining the proper recipient of income security has been artificially divided into the problems of the Scope of Protection, the allowable Qualifying Conditions, the Definition of Contingencies, the Rates of Benefit, and the Duration of Benefit. Sight must not be lost of the fact that this division is only a legal technique in the process of reducing the element of discretion to the minimum - a process which is law making in its most elementary form. It is suggested in the following discussion that only the third and fourth of these problems have any reality; the first and last disappear as schemes approach universality of coverage, and the second is in reality an administrative division of the third. However, for the present purposes, the accepted division is retained.

Finally, it must be emphasised that, since the concern of the present discussion is for the development of legal techniques, rather than as a full record of Social Security Law, no attempt has been made to refer to all post 1952 developments if these have no relevance to the questions at issue. The most interesting developments at present taking place in the European Coal and Steel Community and Common Market in this respect have been deliberately omitted, since no final agreement seems yet to have been reached.

In the preparation of this study, I have received no assistance in the collection of material or the arrangement and criticism of that material except for the supervision

and advice of the Director of my studies, Professor Maxwell Cohen.

Chapter 2.

Background to Modern Social Security.

201. Early Beginnings.

Although, of necessity, consideration of International Social Security is very much occupied with the Social Security (Minimum Standards) Convention of 1952, it is important to understand the background before the more recent developments can be understood.

The first practical, as opposed to speculative proposals relating to International Social Legislation can be found towards the end of the 18th Century. The year 1788 saw the suggestion that agreement between nations could provide double protection against economic or social ills - protection both national and international - in the words of the former banker and French Minister Necker in his treatise on the weakening of religious feeling. "C'est au Gouvernement, dira-t-il en defendant l'idée du repos dominical, a considerer dans un plus grand espace, les interêts de cette partie de la Société (les ouvriers) qui est partout si aveugle, ou si bornée dans ses calculs. Le royaume, qui, dans sa barbare ambition abolerait le jour du repas établi par les lois de la religion, se procurerait probablement un degré de superiorité, si seul il adoptait un pareil changement: mais au moment ou tour les souverains suivraient cet example les proportions anciennes, qui fixent aujourdhui les avantages respectifs des diverses nations commercantes, ne servaient point alterées".[1]

Two important factors acted in favour of the growth of international action. In the first place capitalist industrial organization had more and more an international character, as international trade and commerce increased and the necessity for agreements and understandings between manufacturers and business-men in the different countries became more important. We have seen earlier the way modern commerce has bound the trading countries of the world together and forced them to consult with their commercial neighbours before any decision of importance can be taken. On the other hand, those schools of thought which were hostile to what is sometimes described as "L'internventionnisme sociale" argued that it would result in an increase in prices and a handicap to industry: to counter this objection it was argued that the creation of an international plan must go hand in hand with the increasing "interventionnisme". It was the chief merit of Necker in 1788, Dolfus in 1814, Robert Owen in 1818 and Daniel Legrand a little later to have seen the problem in this light. In modern times, of course, the abandonment of the principle is inconceivable - "l'interventionnisme sociale est chose acquise". As Troclet says, "L'interventionnisme est assure de son existence et assure d'une croissance continue: c'est en raison de ces deux caracteres de l'interventionnisme sociale que se pose le probleme de la legislation internationale du travail".[2]

In the second place, migratory movements have proved a considerable stimulus to the development of an international

system of labour legislation. This stimulus was provided both in advance, through the desire of certain countries to increase immigration, and in arrear through the difficult social position of immigrants who were not entitled to share in the social legislation of the country into which they had immigrated. Sometimes the remedial legislation was based on unilateral action, but in other cases on the principle of reciprocity.

202. The principle of reciprocity.

This principle of reciprocity has in many ways been the bête noir of the extension of International Social Security since it fails to take account of the different stages of development of different countries. However, as will be seen, the strength of the many conventions and multilateral agreements have done much to assure its eclipse.

One of the difficulties of accepting the principle of reciprocity is that there may be a conflict between the general treaties and those based on reciprocity. Raynaud used the expression "automatic reciprocity" or "diplomatic reciprocity" for the automatic application of general treaties over and independently of bilateral treaties.[3] This is in contrast with legislative reciprocity according to which the municipal law introduces reciprocity in the application of an international convention.

The comment of Raynaud was founded on this one point;

the conclusion of bilateral treaties on the same subject between states which had already ratified the general convention. Morellet replied to this difficulty that if the two treaties contain incompatible obligations one must choose the earlier of the obligations if the states parties are not the same, whereas if they are the same, then one must choose the later obligation.[3] The problem would therefore arise in its fullest form in the improbable case where a treaty specified that reciprocity of treatment was reserved to nationals of the contracting states and could not be extended by other agreements to nationals of another country. In this case states should perhaps satisfy the more extended obligations and should realise reciprocity on the basis of the widest possible obligations.

203. Later Development.

It is of interest to trace the development of these ideas through this period from the first suggestion which we have quoted from Necker. It is the chief merit of Robert Owen, for example, that he tried to realise his ideas through a practical plan. By his appeal in October 1818, Owen invited the negotiators of the states of the Holy Alliance meeting at Aix-la-Chappelle to set up a "commission of labour" and to fix an international limit to the duration of work. A.J.Blanqui was the first to transpose this idea into more scientific language. In 1838 he dared to take up Owens' suggestion in oft quoted words - "on a bien fait jusqu'ici des traites de puissance a puissance pour s'engager a tuer les hommes, pourquoi n'en ferait-on pas

aujourdhui pour leur conserver la vie et la leur rendre douce?" At the same time Villerme among the conslusions of his famous inquiry of 1839 recommended a sacred alliance between manufacturers to end the misery of working people. In 1838, the industrialist Daniel Legrand addressed to the French, Swiss and German governments a proposal for the limitation of the working hours of children. In the following year, he asked the French government to recommend an international law limiting the working day to 12 hours. He simultaneously wrote to the Russian, German, Italian and French governments, but without success. In 1853 he appealed to the governments of all industrial countries to promote a law on industrial work. In 1857, making a further appeal, he argued

"une loi internationale sur le travail industriel est l'unique solution possible du grand problème social, le seul moyen de dispenser a la classe ouvrière les benifaits moraux et materiels desirables, sans que les industriels en souffrent et sans que la concurrence entre les industriels de ces pays en reçoivent la moindre atteinte."

Though Legrand achieved no practical results through his efforts, his example focussed attention on the problems and proved an inspiration to his successors.

At the end of this period, some practical results of this agitation began to appear. In the international field we see the Congres Internationaux de Bienfaisance in 1856 and 1857; the congress of the first Socialist International held in 1864 perhaps had greater indirect influence, since

it posed the growing threat of Marxism to the industrial nations of Europe. Bismarck was particularly concerned in Germany over this developing force and with great wisdom attempted to sap part of its growing strength by enacting considerable social reforms to satisfy the demands of the working classes. In 1871, for example, Bismarck attempted in vain to establish an entente with Austria in view of their common social reforms.

Between 1877 and 1890 the weight of interventionism on the national level increased apace and in 1881 the first official consecration of the movement on the international level took place, when the Swiss Conseil Federal set in motion the negotiations which culminated in the Berlin Conference of 1890, at which fourteen countries were represented and 25 resolutions were adopted. In 1897, nearly simultaneously were held the Congress for the Protection of Working Men at Zurich and at Brussels the International Congress of Labour Legislation. In 1900 the International Association for the Legal Protection of Work was created. This constructive activity showed no sign of a halt and gave birth to the International Association for the Struggle against Unemployment in 1910. From this organisation was created the forerunner of the International Labour Office.

From the turn of the century, however, we must follow the course of international social security development, rather than the course of international social legislation.

This survey of the earlier progress, however, is important to show the beginnings of an international movement. The final result of the numerous conferences and plans which took place towards the end of the first world war was the preliminary peace Conference, which created a study commission of five members, which held 35 meetings and presented a project to the plenary session of the Conference. This was adopted with some modifications and was inserted into the Treaty of Versailles;[4] the parties to the treaty bound themselves to recognise that work is not a merchandise nor an article of commerce. At the same time results appeared in the field of bi- and multi-lateral treaties. The earliest bi-lateral social security treaty which entered into full force was that signed on the 14th April 1904 between France and Italy concerning

i) insurance (sickness, unemployment, accident and old age pensions)

ii) the regulation of work (women and children, with provision for the organisation of inspection).

204. Relationship with national laws.

We may notice, in tracing these developments, two separate conceptions of International Labour Law; the first regards it as a unitary concept, taking the view that such legislation is international in the strict sense of the term and therefore uniformly applicable to the whole world. Far the more widely held conception is that which regards the international labour law as contractual in nature, which therefore favours the conclusion of international agreements whether bi-lateral multi-lateral or universal.

The present outline, however, is not the appropriate place to consider the many theories which have been held concerning the relationship between general International Law and National Law. A discussion of such a nature would take up the space of the whole of the present discussion. But one matter of importance does arise which it is as well to mention at the present juncture. The second of the two views expressed above - that International Labour Law is contractual in nature - undoubtedly commanded more respect in the early years of development. Since 1919, however, the great number of Conventions and general Treaties involving large numbers of countries suggests that this method of creating legal obligations has moved from the category of Treaty-Contracts to that of Law-Making Treaties. This seems to be a particularly persuasive argument in respect of the deliberations of the International Labour Office and of the United Nations Organisation, since both these bodies seem to have acquired a supra-national status larger than the mere product of two multi-lateral treaties.

The precise nature of this law-making power has been the subject of much study but it is sufficient for our present purposes to suggest that the distinction between treaties which are law-making and those which are not is of the same nature as the distinction between a rule which is so generally accepted as to be a customary law and a rule which is not so accepted.

Be this as it may, two trends are clear: first, that

in recent years a new legal order based upon the United Nations and similar bodies has had some success in its attempt to superimpose itself on the old classical order: second that in the years to come this influence is likely to increase rather than decrease.

Even if this were not so, the importance of existing conventions and treaties would claim our attention as moving towards the formation of an International Law of Social Security for two additional reasons: first the clear acceptance by the majority of developed states of the necessity for regulating social security problems between their respective nationals (the general rule of equality for non-nationals is an example), the developing practice of International Organs and the increasing examples of State legislation suggest that many rules are approaching acceptance as customary law: second the development of the doctrine of "denial of justice" in relation to State Responsibility opens the question of whether a State may be responsible for the delinquency of one of its agencies in not providing Social Assistance to a non-national residing within its jurisdiction, even if it does not provide such assistance to its own nationals. It must be admitted that at the present time it would be difficult to found international liability under the latter head, but as far as future development is concerned, there seems no logical reason why a state should be liable for failure to provide a mechanism by which an alien might recover compensation for an internationally accepted

private wrong (as, for example, in The Chattin Claim) and yet not be liable for failure to provide a mechanism for recovering compensation for interruption of income, where such failure is internationally accepted as a public wrong.

These arguments being borne in mind, the present discussion must pass on to two themes which clearly show the problems involved in the development of International Social Security: first the work of the International Labour Office and the Conventions and Recommendations sponsored by it: second the principles on which bi- and multi-lateral treaties have been drawn governing the social security relations between states.

211. The International Labour Office.

If one looks at the discussions which took place on those parts of the Treaty of Versailles concerned with social legislation, one finds a list of problems for which it was intended international action should be taken to attempt to find a solution. This list includes, among provisions for the regulation of the hours of work, the struggle against unemployment, the guarantee of a wage assuring the conditions of a reasonable existence, protection of workers against illness, whether of a general nature or due to the type of work on which they are employed and accidents resulting from work, special protection for children and women, old age and invalidity pensions, safeguarding of the interests of non-nationals working in a foreign country, and equal pay for equal work.[5] Such was the background against which the International Labour Office came into being. Perhaps we may summarize the theoretical aspect of this background by quoting in translation the words of the Belgian delegate Mahaim -

"1) universal peace can only be founded on the basis of social justice - this is the postulate of democracy.

2) social injustice at the present time places the universal peace in danger - this is the postulate of the necessity for reform.

3) each nation should adopt reasonably humane conditions of work, not only for reasons of justice, but because the failure to adopt such conditions hinders other

nations in the improvement of their working conditions".

It is also important to take note of the relevant provisions written into the constitution of the ILO. The Conference is required to 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", it being intended that modifications be considered to meet the case of such countries.[6]

Member nations of the ILO are under a duty to bring adopted Conventions or Recommendations before the national authority having legislative authority.[7]

Federal States are under a special duty in regard to Conventions and Recommendations which are suitable for provincial action, but this obligation is no more than the necessity of ensuring that the matter is brought before the appropriate provincial legislative authority.[8]

The Report of the Conference Delegation on Constitutional Questions which afforded the basis of the 1946 revision of the ILO Constitution had this to say -

"These Conventions and Recommendations have during two decades been one of the main formative influences upon the development of social legislation in many countries. It follows that, while the International Labour Conference (ILC) has no legislative powers, it has certain quasi-legislative or pre-legislative functions, which are of unique character and of outstanding importance."[9]

It refers to the placing of members "under a definite legal obligation to take certain action the object of which is to maximise the probability of the ratification of Conventions and the effective application of Recommendations".

At the Paris Session of the ILC, the Committee on the Application of Conventions felt that a clarification and amplification of the constitutional practice was required to ensure increased efficiency, particularly in respect of the legislative authority to which Conventions or Recommendations were to be submitted.

If we now turn to the individual Conventions and Recommendations made at the Sessions of the ILO, the gradual strengthening of the language used and the growing detail of the provisions will be increasingly apparent.

The first ILO Convention concerned with Social Security was passed at the first Session in Geneva in 1919 on the subject of Unemployment.[10] The main emphasis of the Convention was the collection of information and the creation of free public employment agencies. A tentative attempt was made at a solution of "frictional" problems by requiring ratifying states which had established systems of unemployment insurance "upon terms being agreed between the Members concerned" to admit workers belonging to one member and working in the territory of another to the rates of benefit applicable to nationals: nothing is said about qualifying conditions which, presumably,

fall among the terms to be agreed.[11] A Member is also required to apply the Convention to its non-self governing territories, allowance being made for exception where local conditions make its provisions inapplicable or modification to enable adaption to local conditions.[12]

The same session adopted Recommendation I concerning Unemployment, which recommended the regulation under licence of fee-charging employment agencies, the prohibition of recruiting of workers for work abroad except by agreement with the consignee nation and the establishment of an "effective system of unemployment insurance" either through a government system or by subvention to existing benefit associations.

Recommendation 2 (1919), concerning the Reciprocity of Treatment of foreign workers required equal treatment of foreign workers "on condition of reciprocity and upon terms to be agreed between the countries concerned".

At the Genoa Session in 1920, Recommendation 10 showed the first signs of agreement on a more concrete approach by singling out Seamen as a focus on which individual nations should concentrate their legislative activity, though the obligations were no stronger than those of Convention No.2.

Convention 8 completed this particularization by requiring a cash payment as an indemnity against unemployment resulting from loss of his ship.[13] The payer, however, was the owner (not the State) and the maximum period was two months. Again the exception or modification

for local conditions was permitted.

The Geneva Session (1921) turning the focus on agriculture produced Recommendation 11 concerning the prevention of unemployment in agriculture, recognized its special character and advocated modern cultivation methods and more intensive use of land.

Convention 12, by Article I, required the extension to agricultural workers of all laws and regulations relating to Workmen's Compensation.[14]

Recommendation 17 extended in the same way laws establishing insurance against sickness invalidity, old age "and other similar social risks".

At the Geneva Session in 1923 greater detail began to appear. Convention 17, concerning Workmen's Compensation for Accidents[15] extended existing national legislation to all enterprizes, though with power to make exceptions for casual labour, out workers, family workers and non-manual workers exceeding certain limits of remuneration. Seamen and agricultural employees were further excepted. Periodic payments were required unless the competent authority should be satisfied that a lump sum payment would be properly utilized:[16] payment must start from the fifth day after the accident: where the constant help of another person was necessary additional compensation should be provided: in addition national laws must provide for supervisory measures to prevent abuse and provision must be made for the insolvency of the employer.[17]

Recommendation 22 set rates for this compensation at 2/3 of actual annual earnings for permanent total incapacity with appropriate variations where the incapacity was neither permanent nor total. Should death result, the class of dependants should include 1) the spouse 2) children under 18 or above if they are incapable of earning through physical or mental infirmity 3) ascendants if without means and other dependants, or if the deceased was under an obligation to contribute towards their maintenance 4) grandchildren and siblings if below 18 or incapable or orphans or if their parents are incapable of providing for them. Part IV requires vocational re-education to be provided.

Recommendation 23, dealing with the question of jurisdiction in case of dispute, required "preferably" a special court or board of arbitration constituted to represent the interests involved.

Convention 18 developed liability for compensation for occupational diseases, referring to the rates set up for accident compensation: this convention also incorporated the "deadline" provision.[18]

Convention 19 concerned equality for treatment for non-nationals in relation to this subject. Equality was to be accorded to foreign workers and their dependants without any condition as to residence.[19] Special agreements were to be made between members for temporary or intermittent employment in a foreign country and ratifying members were allowed 3 years to introduce a sufficient

system - a sign possibly that difficulties over ratification were becoming apparent.[20]

Recommendation 25, on the same subject, urges measures to facilitate payment of benefit to workers resident in a foreign country, for appropriate legal action where necessary without personal attendance and exemption from duties and taxes in connection with workmen's compensation. Where no system exists in a country, the government is to facilitate the use by the alien of his own country's system.

212. The first Comprehensive Approach.

Up to this time, it can be seen that the new approach to International Social Security had mainly manifested itself through a piecemeal approach to a number of individual problems - for example Seamen, Agriculture and Workmen's Compensation. From the tenth Session[21] however a more comprehensive approach developed which produced a crop of Conventions and Recommendations clearly aimed to introduce some sort of comprehensive coverage of Social Security. An adequate analysis of these Conventions and Recommendations would be very lengthy and the following summary must be read in the light of subsequent developments as outlining the points now of interest.

The Comprehensive Scheme was as follows:- At the 10th Session Convention 24 on Sickness Insurance, Convention 25 in similar terms covering Agricultural workers for the same contingency; Recommendation 29 laying down general principles on this subject to be followed by

national schemes; at the 17th Session[22] Convention 35 on Old Age Insurance in Industry; Convention 36 applying the same principles to Agricultural Workers; Conventions 37 and 38 on Invalidity Insurance; Conventions 39 and 40 Survivors Insurance; Recommendation 43 laying down the General Principles to be followed for Invalidity, Old Age and Survivors Insurance. The 18th Session[23] followed with Convention 44 on Unemployment Provision and a further Recommendation supplementing this with a Statement of Principles.

These 9 Conventions and 3 Recommendations all clearly run to a pattern. In particular, those concerned with Invalidity and Survivors very closely resemble that concerned with Old Age. In formal structure the Conventions are similar to the 1952 Minimum Standards Convention which will be fully analysed later in the discussion. That is to say they make a definition of each contingency, prescribe the duration of benefit, the permitted qualifying conditions, and set down principles as to Administration Finance and Right of Appeal. The most striking omission, and this proved the scheme's greatest weakness, is the absence of any mechanism for determining the rate of benefit to be paid. As far as they go, their terms are not dissimilar from those of the 1952 Convention and it will be convenient for the present to outline the points of dissimilarity.

A noticeable difference is that these Conventions

have only a limited coverage, being intended to protect manual and non-manual employees, outworkers and domestic servants but with a long list of exceptions intended to ensure that the scheme should only apply to those truly employed. At the same time withholding of benefit was permitted to ensure that benefit was only paid for loss of income resulting from the contingency, and that such loss was not extended by the action of the claimant. In the 1952 Convention, as will be seen, the effect of these exceptions was accomplished by a more exact definition of the contingencies and a more general definition of coverage.

The feeling that the provisions of the Conventions might be somewhat strict for under-developed territories can be seen in the provision that states comprising large and thinly populated areas need not apply the convention to those areas if the inadequacy of the means of communication made it impossible. A more exact mechanism to cover this contingency was devised for the 1952 Convention in the form of lower coverage rates.

Conventions 35 and 36, the prototypes of the long-term contingencies, in particular show a somewhat inflexible approach and are couched in language applicable only to contributory schemes, defects cured in the 1952 Convention.[24] For this reason they show particular concern for the termination or maintenance of prior rights, and require more rigid conditions before existing non-contributory schemes were admitted, such schemes being based on 10 years

residence or a means test and providing subsistence benefits. For the contributory scheme either a flat rate scheme or one variable according to earnings or contributions would be permitted, although a somewhat half-hearted attempt was made to ensure a fair variation.

An important part of these Conventions lay in the provisions to ensure equality for non-nationals[25] though an exception is made as to subsidized pensions paid under transitional provisions. Concern is also shown for the special position of frontier workers in the name of "continuity of insurance".

An interesting point lies in the 5 year qualifying period mentioned in the long term Conventions. In the light of later discussions the shortness of this period seems to have been an error and the 1952 Convention, not without some difficulty, eventually permitted longer periods.

Convention 44 on Unemployment Provision made a strenuous attempt to deal with the very difficult problem of ensuring that compensated unemployment was always undeserved and not self-inflicted. The solution put forward included highly complicated provisions defining "less favourable employment" the refusal of which will not lead to disqualification.

The three Recommendations also follow a set pattern. It is not easy to see the intended relationship of the Recommendations to the Conventions since in many ways the

same ground is covered twice. The language of the former, however, is very instructive in that it shows the theoretical principles activating the framers' mind during the period between the wars, whereas the Conventions being framed in more exact language show more the attempts to find technical methods to express these aims. One might say that the passing of these complementary Recommendations shows the lack of faith in the technical sufficiency of the phraseology of the Conventions.

The most noticeable difference in the Recommendations is the attempt to set a lower limit on the benefits to be provided. Benefits paid in cash were to be adequate compensation for lost wages to ensure recovery as early as possible, being a substantial proportion having regard to family responsibilities. The latter phrase clearly shows the need, undefined at that time, of special consideration for the children of beneficiaries - a need which has eventually resolved itself into a separate contingency of family allowances. On the other hand a uniform scale was thought appropriate where workers had adequate facilities to procure additional benefits for themselves. The twofold approach inherent in this part of the Recommendations is the basis of the suggestions developed later in this discussion, though it seems to have been largely obscured by the desire of the framers of the 1952 Convention to cater for every point of view.

The scope of coverage, however, does not show the same forward look, though the Long Term Recommendations require the inclusion of Self-Employed persons of small means "where conditions permit". This restricted outlook, however, is to be expected, since gradually expanding coverage is the most usual method by which social security schemes can be initiated.

The imposition of a Qualifying period, however, is to be allowed provided that it is no longer than necessary to preclude entry into the scheme in order to take undue advantage of it. Here again this seems to be the true principle and is so developed later in the discussion - yet again it seems to have become obscured in the 1952 Convention.

The world depression of 1933 seems clearly to have coloured the wording of the definition of Old Age, which advocates the reduction of the pensionable age to 60 "as a means of relieving the labour market and of ensuring rest for the aged". Changed economic conditions of the 1950s have led to a revision of this judgment. In respect of old age we find an early indication of what seemed to be the appropriate rate of benefit - after 30 years not less than half the remuneration since entry, a formula later modified considerably.

The Unemployment Recommendation throws light on two problems which are not clearly solved by the Convention. Thus the proper principle of the duration of benefit is

to be "as long as consistent with solvency", again obscured in the later Convention. The relation between Social Insurance and Social Assistance in the interim stage before the full development of Social Security is shown by the requirement of the provision of complementary assistance for those who have exhausted or not yet attained their right to benefit.

It can be seen, then, that this pattern of Recommendations and Conventions represented an important and yet incomplete step towards the development of an International Social Security system - incomplete because of the restricted coverage, lack of any standard rate of benefit, of a workable attempt to cater for countries in different states of development, of a comprehensive attempt to tackle social security as a whole - and yet showing the true direction of these efforts uncluttered (as was the 1952 Convention) by the difficulties of accommodating a number of different systems.

Convention 48,[26] concerning the Maintenance of Migrants' Pension Rights, returned to the primary problem attempted during the inter-war years, and attempts to create an international scheme for the long term contingencies (Old Age, Invalidity and Survivorship) under which periods of insurance under different institutions might be aggregated and the liability for benefit apportioned pro-rata between the institutions thus included in the calculation. The second part of this Convention is concerned with the maintenance of acquired

rights, which are to be safeguarded to persons who are resident in the territory of any member irrespective of nationality or who are nationals of a member irrespective of residence. This principle is important since, apart from being a neat device during the development stage of international social security it resolves itself ina developed system into a principle of universality.

At this point, the historical aspect of International Social Security may be said to be at an end, since the 1939-45 war stimulated new developments which were manifested in the 1944 Philadelphia Recommendations and the 1952 Minimum Standards Convention. The former established the aim to "relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work (including old age) or to obtain remunerative work or by reason of the death of a breadwinner" by compulsory social insurance supplemented by social assistance covering all the recognized contingencies including "certain associated emergencies, generally experienced, which involved extraordinary strain on limited incomes".[27] The detailed recommendations formed the basis for the 1952 Convention which is fully analyzed below.

221. Relations between National Systems.

The absence of a general scheme regulating the relationships between different national schemes which arise through migration has led to a vast mass of treaties, mostly bi-lateral, attempting to find ad hoc solutions. This fact alone is a sufficient reason for advocating the adoption of international objectives for social security rather than reliance on the confused principles of a convention aimed to suit every existing system.

At a later point in the present discussion the adoption of the Residence Principle of coverage is suggested as a solution: to that end a brief analysis of the agreement between Australia and New Zealand (both systems based on residence) clearly illustrates the straightforward nature of this solution. By contrast the 1948 Belgium-France Convention (which has been taken as a model for many other such conventions between countries whose system of coverage is not based on Residence) is highly complicated and confused and the attempted extension of this method by the 1949 Brussels Treaty Powers Convention does not add simplicity. Perhaps a more significant pointer to the difficulties arising from this clash of principles can be found in the significant omissions - e.g. the omission of a reference to health schemes in the treaty between the UK (based on Residence) and France (not so based).[28]

222. Relations between systems based on Residence.

a) The Social Security agreement between Australia and New Zealand[29] covers old age, invalidity, survivors, family, unemployment and sickness benefits. The agreement aims to cover the case where a claimant changes or has changed his place of residence from one country to the other. The measures to be applied depend on whether the change of residence is of a permanent or a temporary nature.

Where the change is of a permanent nature, Part II of the agreement applies. A claimant under this part who applies to his new country of residence for payment of benefit must prove his residence in his old country of residence and must satisfy the new country of his permanent residence there. The latter is not so difficult as might appear at first sight, since any residence after 6 months permanent residence is deemed to be permanent unless the authorities of the old and new countries agree to the contrary.[30] The new country, in dealing with an application for benefit from such a person, is to treat residence in the old country as residence in the new and birth in the old country as birth in the new.[31] However, these provisions do not operate to confer an old age, invalidity or widows pension to a claimant unless he would have been qualified on residential grounds to receive a comparable benefit under the law of the old country if residence in the new country had been residence in the

old country.[32] On similar principles the onset of blindness or permanent incapacity for work in the old country, the prior residence of a deceased breadwinner in the old country or his detention as an imnate in a mental hospital in the old country will be counted as if the old country was within the jurisdiction of the new. The amount of the benefit is to be assessed according to the laws of the country of residence.[33]

Where the residence in the new country is not permanent, Part III provides for payment on an agency basis. That is to say, residence in the new country is to count as residence in the old and will not disqualify the claimant from benefit to which he would have been entitled if he had remained in the old country, though payment may be withheld until return to the old country. The new government is to act as agent for the old for the receipt of applications and the payment of benefits and is to render appropriate accounts.[34]

Part IV of the agreement provides that any claim under either Part II or Part III of the agreement is to be made to the country in which the claimant is then present.

223. Relations between systems not based on Residence.

b) The Convention between Belgium and France signed in 1948 is important, both because it has served as a model for many other bi-lateral treaties and because the first part (A3 in particular) contains a practical solution to

the difficult problem of "frontier workers". Taken with the third Convention outlined below, it gives an example of the difficulties of the piecemeal approach.

The basis of the Convention is contained in Article 1, under which Belgian and French employed persons or persons treated as employed persons under the existing Social Security laws were to be subject to the existing social security legislation applying in France and Belgium respectively, the law to be applied being that at the place of employment.[35] However, a number of exceptions were made to the coverage which may be summarized as follows: Persons employed in the country in which they are not normally resident by an undertaking having in the country of normal residence an establishment in which they are regularly employed if the employment in the second country does not last more than six months. A variation of this principle was allowed where the employment was prolonged for unforeseen reasons beyond the period originally intended and exceeded six months; the application of the law in this case might be continued by way of exception to the general rule with the agreement of the country of temporary employment. In the case of frontier operations, the laws of the country in which the employer has his principal place of business should apply. Similar provisions apply for employees of public transport undertakings, even where the employment abroad is permanent and for employees of official administrative services.

Special provision was made in the case of family allowances for persons other than employees who are to be subject to the laws of their principal place of business or, if they do not carry on any business to the laws of their place of normal residence. Special provisions are also made for diplomatic and consular representatives.

Under Part II of the Convention, special provisions are made in relation to the different contingencies. Division I of this part refers to Sickness, Maternity and Death. Employees and their dependants (if living with them) may receive sickness benefits if a) they have been working as employed persons in the new country, b) if the illness has begun since their arrival in that country and c) if they fulfil the conditions of either the old or the new country. For Maternity benefits the same rule is to apply, condition b) being replaced by a condition giving liability to the country "to which the insured person belonged". at the presumed date of conception. Death grant follows the same pattern of conditions a) and c).[37]

Benefits in kind for invalidity and old age pensions paid to claimants and their dependants are to be furnished in conformity with the legislation of the country of residence. Again old age pensioners who have gained their pension by aggregation of their periods of insurance are to be entitled to Sickness benefits if they fulfil the conditions of either country.[38]

Provision is made for accounting between the two Social Security systems, including a provision that, if the average cost per insured person in France is less than in Belgium the former country might levy a contribution for benefits in kind.[39]

The remaining divisions of the Treaty apply similar principles in respect of the other contingencies and, for the sake of brevity, need not be detailed.

c) In 1949 a Convention was signed between the Brussels Treaty Powers (Belgium, France, Luxembourg, Netherlands, UK) to extend and co-ordinate social security schemes between those countries. This convention represents an attempt to further a "most favoured nation" policy and shows clearly the difficulties which may arise thereunder.

Thus nationals of any of the contracting parties are to benefit under any bi-lateral treaties between any two parties to the agreement. Insurance periods completed under the legislation of three or more of the parties are to be aggregated, providing they do not overlap. This rule applies both in order to determine and also to maintain the right to benefit.[40]

One problem, which immediately arises owing to the different nature of national schemes, springs from the frequent requirement that the insurance period must be completed under a special scheme. This is solved by requiring membership of any equivalent special scheme to count if such scheme exists in the foreign country; if, on the other hand, it does not, then any general scheme is to count in its place.[41]

A second problem, arising from the different rules applicable under different schemes for the calculation of such periods, is solved by taking the rules most favourable to the claimant. The right to maternity benefit, however, is governed by the legislation in force in the country where the birth takes place, though full account is taken of insurance periods completed under the legislation of other parties.[42]

The contingency of old age has its own special problems, and special rules are laid down to deal with them. In principle, benefits for old age (survivors benefits are similar) are computed on the basis of the total of benefits to which the claimant would be entitled if the aggregate of all periods of insurance had been completed under the legislation of each contracting party. Each party is to decide whether such aggregate is sufficient to give a right to benefit and, if so, is to pay pro rata for the period completed within its jurisdiction. A national may, however, prefer to rely on his claims under existing bi-lateral agreements and may waive the operation of this provision, though he may at any time abandon his waiver. Where benefit is calculated on the basis of average earnings notice is not to be taken of earnings in the foreign countries.[43]

Invalidity pensions are to be calculated in the same way, unless the existing bi-lateral agreements provide for any one institution to be solely responsible. Acquired rights, which would be maintained if the claimant continued

to reside on the territory of either party to a bilateral agreement will be maintained during residence on the territory of any contracting party.[44]

Where the dependants of a claimant, who is employed in one country, are ordinarily resident in the territory of another, they are to enjoy the benefits in kind of the legislation of the country in which they reside. To this end, the periods completed in the country of his employment by the claimant are to be treated as periods completed in the country in which his dependants are resident. This rule is not to apply where a dependant has not become ordinarily resident until after the onset of illness or accident or the presumed date of conception.[45]

Chapter 3

301. Preliminary Problems. The mechanism of development.

The foregoing short historical summary having outlined the previous progress in International Social Security we are now in a position to analyze the basic problems of Social Security and to use as the vehicle of our analysis the Social Security (Minimum Standards) Convention of 1952. First, however, a few words must be said toexplain the mechanism of the discussions leading to the convention.

At its 110th session,[46] the Governing Body of the International Labour Office decided to place on the agenda of the 34th (1951) session of the Conference the item "Objectives and minimum standards of social security". The standing orders of the Conference prescribe a double-discussion procedure. In accordance with this, the ILO drew up a preliminary report for communication to governments in preparation for a first discussion by the Conference. This report comprises a review of present practice and the relevant law and also includes a questionnaire. We will refer to this for convenience as Report IV (1). Later in the year a supplement to this report was published summarizing the social security schemes in existence in the member States of the ILO.

Replies to this questionnaire were received from 24 governments by the middle of December 1950. It is interesting to note the governments which were sufficiently interested to reply: France, Chile, India, Argentina,

Austria, Brazil, Ceylon, Denmark, Ecuador, Finland, Israel, Italy, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Phillipines, Poland, Sweden, Switzerland, Turkey, United Kingdom, and the United States. After this date replies were also received from Canada, Egypt, Mexico and Portugal, but were too late for inclusion in Report IV (2), which made an analysis of the replies received from the 24 governments and proposed a list of conclusions. The 1951 session of the Conference held at Geneva considered the report and the replies of the Governments and passed a resolution adopting proposals for a convention as general conclusions and placing the question on the Agenda of the 1952 session.

This set in operation Article 39 of the standing orders of the Conference, which required the ILO to prepare the text of one or more conventions and to communicate them to the member governments for amendments and suggestions. This was achieved by report V(a)(1) and replies were received from 30 countries in time for analysis. It is of interest to note that the list of Governments replying to this report differed from the list of governments replying to the former questionnaire. The second list does not include Brazil, Ecuador, Israel, Italy, Sweden, the United States, or Portugal. It did, however, include several states which had not answered the previous enquiry, namely Afghanistan, Belgium, Bolivia, China, the Dominican Republic, West Germany, Iceland, South Africa, Viet-Nam and Yugoslavia. The analysis of these replies was contained

in Report V(a)(2) which was considered by the 1952 Conference which finally adopted the Social Security (Minimum Standards) Convention. We must also refer to Report V(b) which is entitled "Objectives and Advanced Standards of Social Security." It should be explained that the original plans for a convention had envisaged a division into minimum standards, advanced standards, and common standards. The sections on minimum and advanced standards deal with the scope of protection and benefits and were symmetrical in scope and presentation differing only in their quantitative provisions. The common standards dealt with questions of principle concerning the right of appeal, finance and administration which could be determined in the same way whether minimum or advanced standards were applied. The sections on minimum and advanced standards respectively were subdivided into parts, each dealing with the scope or protection and the benefits for a particular branch of social security, such as sickness or old age. It was thus envisaged that the convention could be ratified by members who complied initially with at least three parts selected from either the minimum standards section or the advanced standards section as well as with the common standards.

The 1951 session of the Conference only had time to consider those proposed conclusions relating to the minimum standards and the common standards. These conclusions were amended in various details and it was decided that they should be submitted for discussion to the 1952 session

of the Conference. The proposed conclusions concerning the advanced standards, however, were to be brought up again at the 1952 session for a first discussion. The report V(b) therefore contained the basic materials for a first discussion of advanced standards. We shall examine the results of this discussion at a later stage of the discussion. Suffice it to say at present that the divorce between minimum and advanced standards which resulted in the necessity for the creation of two separate instruments has made it necessary for the second instrument, that concerned with the advanced standard, to be capable of ratification by a certain number of members either at once, or within a few years; whereas as long as the advanced standards were part of the general convention it was possible to envisage a longer period before members undertook to comply with any part of the advanced standards.

During the different stages of the formulation of the 1952 Convention, the different Articles were renumbered, some on more than one occasion. It has been convenient to refer to them by their numbers in the first draft of the Convention. The Reader should, therefore, bear this difference in mind when referring to the final text of the Convention.

It is also convenient at this stage, before considering the main problems raised by the Convention, to deal with anumber of minor issues:-

302. Character and scope of international regulations

This new move to create a general convention was clearly a product of the Philadelphia resolutions and the experience of many of the advanced nations in the years immediately preceding and following the end of the war. The Philadelphia Recommendations provide for cash benefits in case of maternity, sickness, invalidity, old age, death of breadwinner, unemployment, employment injury and family responsibilities together with medical care on all occasions when it is required. This, as we have seen, was a revision of the previous conventions passed between the wars on the individual branches of social security, or social insurance as it was then usually referred to. The novelty of the Philadelphia Recommendations lay in the codified and coherent form of presentation and in the comprehensiveness of coverage in respect of persons and contingencies. At the time of the Recommendations it was stated that it was intended that after sufficient time for experience had elapsed the contents would be redrafted into more permanent convention form.

The impetus and extension of the conception of social security was clearly an important driving force behind the proposal for a convention. The 1939-45 war had effected in the post war national schemes a tendency towards the widening of the classes of population included, a widening of the range of contingencies covered, a raising of the rate of benefit so as to more nearly equate the needs of the population, a loosening of the tie

between benefit right and contribution payment and a general unifying of the finance and administration of branches hitherto separate. Other noticeable features of the new movement were the absorption or co-ordination of social assistance and the development of a new organization for social security which has the character of a public service for the citizenry at large. This tendency causes a much closer relationship between the social security institution and the government and tends to make social security policy dependent on government social and economic policy generally. It is noticeable that the pre-war conventions and recommendations which we have discussed failed to foresee this development. The increasing acceptance of the new ideas over the whole world has been shown by its adoption in many post war constitutions and also by its inclusion in the Declaration of Human Rights.[47] In the discussions it was claimed that the new formulation would assist members of the ILO in the creation or reconstruction of their social security systems. We shall see that there is some doubt as to the efficacy of the final conventions in this respect.

It was therefore decided to propose a convention which should in particular set down minimum benefit rates, which had been conspicuously lacking from the earlier conventions. It should also be so framed as to be acceptable to most members either at once or after such efforts as members could reasonably be expected to make, in the near future.[48]

It was recognised that care would have to be taken to ensure that the instrument was not incapable of acceptance by a member owing to points of a relatively minor importance. For example, the pre-war conventions often caused difficulty in this respect among States whose systems did not conform to the classical pattern, but which would probably be recognised as adequate by international opinion in the post war world. Many of these assumptions, however, were of sufficient importance to warrant an enquiry into the general opinions of member States. The questionnaire accordingly posed certain of the problems for reply.

303. Convention or Recommendation?

Should the new programme be carried through by a full convention, or a mere recommendation? How would Federal States be affected? - The ILO itself was in favour of a convention and this was the opinion of 2/3 of the governments which replied to the questionnaire, only five governments being strongly in favour of a recommendation.

304. Differences in National Development

Should the Convention create two standards? The ILO thought this essential owing to the vast disparities between the standards already achieved in different countries. It was clear that the difficulties besetting some members, general poverty, illiteracy, lack of means of communication, lack of medical resources and the rest would make even a minimum standard difficult of achievement. On the other hand it was clearly unwise to lower the

standards set in the pre-war conventions. A compromise was adopted by allowing temporary exceptions notably in the range of persons protected. A further difficulty was caused by the fact that the pre-war conventions did not maintain a consistent standard between themselves, but this was overcome by devising a formula of sufficient generality to be compatible with these previous provisions. The main danger at this point was thought to be to avoid losing contact with reality, though in the result the greatest weakness is losing touch with principle. This option of two standards is not however to apply to the provisions included in the section on common standards.

This point of view was favoured by three-quarters of the governments who expressed their views on the questionnaire. New Zealand felt that the advanced standard should be dealt with by means of a recommendation. Israel expressed the very sound view that though there could be two standards for persons protected, and for content, rate and duration of benefits, there should only be one standard for rights to benefits. The United Kingdom felt that two standards were not advisable where benefits are assessed to secure to the family the means of subsistence. It is interesting to note that Switzerland joined Finland, Pakistan and Ceylon in preferring only the single minimum standard. Poland suggested that a member ratifying on the basis of the minimum standard should be required to achieve the advanced standard within 5 years. This seems clearly impracticable, since it would prove a deterrent to

ratification by a country which had not already achieved the advanced standard. On the other hand it would be possible to require an annual report as to the progress made towards the attainment of the advanced standard. France, supported by Brazil, thought that the advanced standard should be regarded as an interim stage and the possibility of future revision of the texts should not be excluded. The final result of the discussions on the advanced standard must await the completion of the discussions on the minimum standard.

305. The Breadth of Coverage.

What should be the branches of Social Security? Here the provisions of the Philadelphia Recommendations were followed, with the sole omission of benefits "in respect of extraordinary expenses, not otherwise covered, incurred in cases of sickness, maternity, invalidity and death".[49] The branches proposed by Report IV (1) were as follows:

a) medical benefits in every condition requiring medical care

b) medical benefits in case of sickness and sickness allowances

c) unemployment benefits

d) old age pensions

e) medical benefits, sickness allowances, invalidity pensions, and survivors pensions and pensions for employment injury

f) general family benefits

g) medical benefits in case of maternity and maternity allowances

h) invalidity pensions

i) survivors pensions.

The first branch, of course, is intended to cover the type of public service which has been set up, for example, in New Zealand and Great Britain. This classification was approved by a majority of the governments, though numerous alterations and additions were proposed. The United Kingdom wished to include death grants to meet funeral and other expenses. Ceylon however rejected the list as being a too difficult subject of international regulations. Austria proposed the addition of convalescent leave, and Pakistan payment to families whose breadwinner is imprisoned. Several South American States wished to rearrange the order so as to reduce the importance placed on unemployment insurance; Chile for example feels that this should be excluded from the section dealing with minimum standards, since it can only be attempted in advanced countries. Finland and the Netherlands wished to delete the first branch. Israel wished to allow the payment of grants in the case of invalidity or death of the breadwinner, but it was thought that this represented a reduction in standards.

Report IV(2)[50] points out that branch a) need not necessarily take the form of a public service, even though all countries complying with it had done so by this method. A further suggestion to provide for "sickness benefits or sickness allowances" was also rejected.

Considerable theoretical difficulties arise over this

division into contingencies. It will be convenient, however, to leave this problem until we consider the definition of contingencies in detail.

306. Requirements for ratification.

The need here was clearly for flexibility. The method suggested that it should be sufficient to ratify in respect of the same standard in at least three of the branches of the convention. Since however the branches vary considerably in social and financial importance, a system was suggested under which two of the branches ratified must be found within the branches a) to f) and that branches a) and b) should not in this respect count as two branches. The ratifying state must, of course, also comply with the common standards to which we have referred, and must undertake to report to the ILO in respect of branches which it has not ratified.

The opinions of the governments disclosed an equal division of opinion on this point. A majority were in favour of the requirements for compliance with the minimum standard and a majority of those who accepted the inclusion of an advanced standard in a Convention approved the requirements in this respect. Three governments felt the necessity for additional degrees of ratification. Several governments wished to make the requirements more stringent, but others did not accept the grouping requirement of the branches chosen, though the ILO conceded the requirement that branches a) and b) were not to count as separate. A further suggestion which was made allowed ratification on

the basis of a mixture of advanced and minimum standards.

Many countries felt that special recognition should be given to countries which ratified in respect of all branches, or which extends cover to all persons gainfully occupied. We may note here that the importance which is attached to special merit suggests that much of the driving force behind the convention lies in prestige or propaganda value. Poland thought that family allowances were often a means of adjusting wage rates, and proposed that sickness insurance and maternity insurance should be regarded as a single branch of social security and that there must be compliance with at least one branch of pensions insurance. The UK and US were not generally in favour of the weighting of certain branches.

As to the advanced standards, Brazil suggested that there must be compliance with the three more important branches for each country having regard to its social and economic conditions. The necessity for compliance with common standards was not challenged.

These requirements were included in the draft convention and further comments were made by the governments concerned. In particular France felt that ratification should not be possible merely on the basis of medical benefits, benefits on incapacity to work and maternity benefits, all of which may be provided under a single scheme. Canada and South Africa, who had not replied to the earlier questionnaire felt doubt as to the method of ratification.

The Conference Committee of the 34th Session of the ILO in its discussion of these suggestions recognised by a majority vote that the rules previously suggested would be too stringent for the less developed countries to comply with in the near future and therefore proposed that ratification could be possible if half the total number of employees in industrial concerns employing 20 persons were covered, though this exception would be regarded as temporary and there should be an obligation to report the progress made towards attainment of the minimum standard. The Employers delegates also voiced their opinion that discussion should be limited to employees, and particularly criticised the extension to residents and the concept of unemployment benefit unrelated to previous employment. On this argument, the Committee felt itself unable to deal with such questions of a juridical nature.

At the 35th Session, the question of the number of branches necessary for ratification occupied an important part of the discussions. The Committee on Social Security accepted a proposal by the Workers Representatives to require compliance with four branches. In full Session, however, after a long discussion, a Norwegian amendment reducing the number to three branches was eventually carried.

The special position of Federal States[51] causes some difficulty here, since in practice few international conventions have been ratified by Federal States, with the

exception of those dealing with maritime problems. This is a particular difficulty having regard to the form of the proposed convention since the unified nature of its obligations are particularly likely to transcend state and federal jurisdictions. The technique therefore suggested was that a Federal State should be deemed to comply with the provisions of the Convention if the provisions were covered by Federal laws, or were governed by State laws in two thirds of the States in the Federation. It is of interest to note that in Austria, social security lies within the competence of the federal government; the position in India is similar, with the exception of medical care. Brazil has also this division of function. In both Switzerland and the United States the responsibility is shared.

307. Voluntary or Compulsory Coverage

The Committee of Experts, in their original formulations, recognised that one of the defects of the pre-war conventions had been their insistence on form rather than reality, and an attempt was made to accept a voluntary insurance system provided that a substantial portion of citizens were covered by it. This method has been adopted particularly in Denmark, Sweden and Switzerland, but had only been covered by the pre-war convention on unemployment insurance. The questionnaire therefore suggested acceptance of such systems provided that the scheme was subsidised and supervised by the public authorities. Other differences of technique, such

as dependence on the fulfilment of contribution conditions, or a means test or residence conditions were thought to be covered by the broadness of the drafted clauses.

Half of the replying governments were in favour of this clause, though a number required a guarantee that the numbers covered by the schemes were substantial. The ILO suggested a condition to meet this objection: that voluntary insurance would be recognised only to the extent to which it had actually provided protection during the previous three years. Further, the contributions of insured persons were not to exceed three quarters of the costs of benefits and administration.

This clause was the subject of much discussion in Report V(a)(2). Article 6 of the draft Convention read as follows:

"Where the insurance against the contingency concerned is voluntary, the public authorities shall subsidize such insurance to the extent of at least one quarter of the expected cost of benefits and administration."

The countries most concerned with voluntary insurance, Sweden, Switzerland and Denmark, gave affirmative answers to this Article, though the Swiss thought that the requirement as to subsidy should be deleted. The Netherlands, Norway and Denmark also support this deletion. On the other hand Poland felt that the whole Article should be deleted on the grounds that employees with low earnings, who were most in need of protection, were least likely to be able to afford the voluntary insurance premiums.

France also felt this point of view persuasive.

It can be seen from the discussion that it was generally considered that the essential feature of social security is the collective bearing of risks by groups which include both favourable and unfavourable risks. If even the minimum benefits of social security are to be provided, the necessary financial resources needed for the smooth running of the scheme cannot be supplied only from the group which is in greatest need of the benefits. The cost cannot be supported in its entirety by the low income groups but must be shared with the higher income groups through some such agency as the State or an insurance institution.

There are however three schools of thought on the problem of the level of benefits which ought to be provided for wage earners and other persons of comparatively small means. One school feels that benefits should approximately equal the previous wage level of the insured and should, without supplementation, be sufficient to enable him to retain his former standard of living. Therefore it is felt that voluntary insurance and saving should be needed only by persons with moderate or high incomes. A second school, however, feels that a subsistence level should be secured, and should leave to the individual the possibility of supplementing this minimum benefit by voluntary means. The third school, which is represented by the countries practicing voluntary insurance, feels that it is sufficient that the government should supervise the existing voluntary

institutions and to leave the rate of benefit to be fixed, within limits, by the insured. It can be seen that the question of voluntary insurance applies to the third school, and to the second school only as far as the advanced standard is concerned.

At the 34th session of the Conference Committee on Social Security the question was fully debated. The principle of subsidy was approved by a narrow margin, though this was contrary to the opinions of the Employers' members. The principle of supervision seems to have been generally accepted, on the basis that this was necessary to ensure that a substantial proportion of the low income groups could be covered thereby. Any ratification by virtue of a voluntary scheme would mean acceptance of the common provisions in the convention, and also acceptance of the general standards as to scope and benefits.

The Drafting committee was asked to devise a form of words to contain all these opinions, but it is significant that in the time available the committee was unable to find a form of words that would convey with sufficient precision the condition as to adequacy of the scope of benefit. The wording accepted was

"a member may take account of protection effected by means of insurance, which, although not made compulsory by national laws or regulations for the persons to be protected - a) is administered in accordance with the prescribed standards

i) by public authorities or

ii) by insurance institutions under the supervision of

the public authorities and

b) complies, in conjunction with other forms of protection where appropriate with the relevant provisions of the Convention."

In fact it appears that Denmark especially has succeeded in attracting a high proportion of the low income group into voluntary insurance - in fact to a much higher level than has been reached by many compulsory insurance schemes. The subsidy by the state is particularly used to enable the institution to accept people who are likely to increase its liabilities rather than its assets and also to enable transfer from one institution to another without loss. It can be seen, therefore, how doctrinaire it would have been to refuse recognition to such schemes, even though theoretically they have failings. But, on the other hand, some form of supplementary assistance is necessary to provide for the improvident. In respect of privately run employees insurance schemes, it is interesting to note that American experience shows that comparatively small tax concessions will act as a strong inducement to the employer to create such schemes for his employees. On the other hand for contingencies such as employment injury, maternity and family allowances voluntary insurance seems inappropriate, and in this case the option allowing voluntary insurance should not be permitted, since it had previously been decided that social assistance should not be recognised as a method of covering these contingencies.

The article proposed by the Drafting Committee was not, however, accepted without amendment as the final form. As adopted, the text allows the inclusion of voluntary insurance as a basis for ratification in respect of all categories of social security except employment injury, family benefit, and maternity benefit (except that part of the latter which relates to medical care) provided that the scheme is supervised by the public authorities or administered in accordance with prescribed standards by joint operation of employers and workers, provided that it covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employees and provided that it complies with the other appropriate provisions of the convention. These amendments were accepted by the Committee on Social Security on the basis of proposals put forward by the employers and workers delegates and of the general discussion at the 34th session. One proposal of the workers to require that the schemes be subsidised by the governments concerned was rejected, but a proposal by a government member to allow voluntary insurance to be possible as far as the medical portion of the maternity benefit was concerned was adopted. A further Workers amendment obliging a country ratifying on the basis of voluntary insurance to render such insurance compulsory within three years was rejected.

Chapter 4.

The Scope of Protection.

401. General Considerations: the search for a principle.

Perhaps the most difficult of the problems facing a growing system of International Social Security is that concerned with the scope of protection. This is of importance both from the internal point of view - to assure to every individual a just national system - and from the external point of view - to ensure the greatest possible flexibility and interchange of persons between the different national systems. In other words, we must ask both i) "Is it fair and just to exclude (for example) a self employed man from Employment Injury Benefit?" and also ii) "Whether or not this is just, will it be possible to have the maximum interchange between different systems if no standard answer is given to this problem?"

Answers to this kind of question have been given in many different ways. As we look at the international discussions and the national laws and regulations which throw light on the suggested solutions to this problem we must be on the watch for the difference of approach between what we may call "interim systems" and "completed systems". A social system in the early experimental years may well seek to remedy what seems the most immediate cause of hardship or the cause most easily remedied. Such systems will give us little indication as to what system would be most suited to a fully developed economy. On the other hand we must also consider whether the adoption of a certain

kind of interim system may prevent the attainment of another more suitable kind of completed system. For example, an interim system based on the Social Insurance principle under which contributions are at first to be paid as a percentage of wages of certain classes of employed persons is not likely to lead to a completed system based on Residence: on the other hand an interim system based on the Social Assistance principle and, therefore, relying on the Means Test or Income Test is not likely to grow into a completed system based on the coverage of Employees or of the Gainfully Occupied plus their Dependants. This does not mean that a growing system could not, if it wished, changes its root principle, but that if it did so it would be likely to run into administrative and political difficulties.

402. Non-Theoretical factors.

Such administrative and political considerations play an important part in shaping the form of a Social Security system. In the first place they may tend to obscure the objectives to which the system is working. Thus in the Eastern European Countries, and in the USSR, Social Security Schemes are used to provide incentives in order to maintain the closely controlled economic system. In other countries, as in France, the Social Security Scheme has been developed as a means towards raising the birth rate: in Great Britain, it has become part of a system of redistribution of income. As we have seen in suggesting the development of Social Security from

Social Assistance through Social Insurance, such social and political considerations have now come to play a much closer part in the operation of Social Security as a direct result of the powerful side-effects on economic and social conditions wrought by the Social Security Scheme itself.

In the second place purely administrative considerations may play an important part in the choice of system to be operated. As we have suggested in discussing the transition from Social Insurance to Social Security,[52] the mere existence of universality solves many difficult problems which arise in systems having a lesser coverage. Thus the more complicated methods of financing by contributions which are often difficult to collect once a scheme is extended beyond the scope of Employees become simplified where financing problems can be considered together with general taxation collection. In the same way a restricted scheme must often take great care for the representation of beneficiaries on bodies advising the Administration: where all are potential beneficiaries, such advice can more easily be left in the hands of the normal representatives of the people.

On the other hand, where the body of persons protected falls short of universality and is based on employment, a variety of convenient administrative techniques can be used which are not so readily available where coverage is extended beyond employment. For example, the value of benefits or the rate of contributions can be calculated

by reference to the wages paid during a certain prior period. With some difficulty this principle can be adapted to the Gainfully Occupied other than Employees, but cannot assign an appropriate benefit to an Invalid who has never had good enough health to earn his own living, or to other members of the community who do not come into the category of Gainfully Occupied. In some cases, this principle cannot even be happily applied to Dependents of the Gainfully Occupied, since most systems do not relate the amount of children's benefit to wages but to subsistence, though other considerations may be more influential in this particular instance. The calculation of contributions faces a similar difficulty in that the ready criterion of earnings exists in relation to the Gainfully Occupied, but not for other Residents. These considerations seem to constitute a tempting invitation to restrict the scope of protection to persons whose coverage can be based on connection with employment or economic activity; on the other hand, general world developments and considerations of fairness and justice argue strongly that principle should not give way to convenience.

403. Trend to universality: through residence or gainful activity?

The principal issue among developed countries is between a coverage of all residents and a coverage of all in gainful employment and their dependents. The former seems strongly entrenched in the countries of Northern Europe and the European nations of the British Commonwealth.

The latter seems to be the guiding principle in the developed systems of Western Europe (excluding the United Kingdom) and of Latin America. The Residence principle seems to be associated with the principle of subsistence benefits: whereas the gainfully occupied principle is usually found with the payment of variable benefits. There are historical reasons for this association, but there does not seem to be any reason why a system should not at once be based on residence and pay variable benefits.

When the two principles are compared, however, there does not seem to be necessarily a great difference in practical coverage between them. This opinion is supported by at least one commentator in the International Labour Review[53] who stressed the nearness of the two classes in percentage coverage, though admitting the profound difference in conception. Although one might not be greatly concerned on the first question, the second is the root of many differences of treatment which are of importance. The similarity and yet the difference can perhaps be most closely seen if we consider the modification of the Residence principle put forward among other countries by Denmark - namely the principle of Residents less the non-contributors and the non-indigent. At first sight this seems to suggest that (by reversing the negatives) a social system should provide for those who have paid Social Insurance contributions or those who are in need. The true meaning of the idea, however, (and this shows the more subtle combination of Insurance and Assistance

which is found in Social Security) is based on the broader definition of "contributors" - not those who have paid monetary contributions but those who have contributed to the benefit of the nation from which they are in turn claiming benefit.

404. "Residence" and "ordinary residence".

A short comment must be made at this stage on the relation of the two terms "residence" and "ordinary residence". It is unfortunate that very often these two terms both bear the same meaning. This arises because sometimes a distinction is made between "residence" and "physical presence", in which case the former requires some form of settlement in a country to be understood: in other cases no distinction is made so that "ordinary" has to be added to "residence" to suggest the required degree of settlement, unadorned "residence" being used for mere physical presence. This distinction is vital if the arguments for the adoption of Residence as a principle for problems of scope of protection are to be understood.

405. Arguments in favour of the Residence principle.

It has been argued at an earlier point in this discussion that there are basically two problems involved to which the Residence principle is applicable, first, Question A) "to whom should the claimant turn for benefit", second, Question B) "on what principles should ultimate liability for benefit be decided". In respect of A), "residence" is used in the sense of mere physical presence: in respect of B) it is used in the sense of ordinary residence

In spite of these two definitions of the term, it is a strong argument that, since these two problems are very similar in nature, substantially the same answer be given to each: and although ordinary residence may be only one of many answers to question B), it is the only sound answer to question A). In order to substantiate this argument, we must consider each question separately.

406. Residence as solving primary liability.

For the purpose of ascertaining to which national system the claimant should primarily apply, it is clear that mere physical presence in the vicinity of national claims offices is sufficient, subject to such minimum conditions as are necessary to prevent abuses, such as deliberate movement into the jurisdiction of the system known to be least harsh to the claimant or most reliable in its payment of benefit. Such minimum conditions could very satisfactorily be an irrebutable presumption of good faith after 1 years residence, before this period is satisfied it being open to the national system to refuse payment on good evidence of abuse. It is tempting to confuse the issue at this point by arguing that this period should vary according to the nature of the contingency - but it must be made clear that this mechanism is merely a simple rule to establish primary responsibility and is not to be confused with the rules for ultimate liability. It is clearly an important characteristic of the answer to this problem that there should be no in-between period during which an individual is technically connected

to no country so that an individual will be allocated to a system at all times. It is difficult to see how the adoption of any other principle could bring as satisfactory a result. The countries of Northern Europe have laid stress on nationality: although this principle by itself might provide a solution, (since most individuals have a readily ascertainable nationality or dominant nationality) where this principle operates in conjunction with other principles (as is often the case) injustice arises. Thus where two countries adopt the nationality principle, they will clearly provide protection for their nationals living in the other country. But where such a country will provide protection to persons actually in contact with its officials, the nationality principle acts to exclude resident aliens and thereby causes much injustice.

Further considerations in favour of territoriality arise from the administrative factors connected with the collection of contributions and the ascertainment of the fulfilment of qualifying conditions. Though clearly the payment of benefits can be made to claimants outside the jurisdiction of the protecting country, compulsory contributions cannot be collected with similar ease. Not only is it more difficult to establish effective regulations for payment of contributions in foreign currencies, but in the last resort a compulsory system cannot easily compel payment in those circumstances, since the debt is not a true private law debt (which can sometimes be enforced in another country) once the Social Insurance principle

has to be abandoned, but is more in the nature of taxation.

Where, before benefit is paid, the occurrence of qualifying conditions has to be ascertained, further difficulties arise unless the standards adopted for the ascertainment of those conditions are standardized. The ascertainment of percentage invalidity, for example, is particularly prone to the variation of local standards. These considerations support the preference for residence as a basic principle, though not every problem is thereby solved. Where an older man, for example, changes his country of Residence, in order to join his children in their land of immigration, the principle of territoriality may point to his new country as having the responsibility for the provision of Medical Care, even though the greater part of his working life was for the benefit of his old country: but do the same considerations seem applicable to the question of the payment of old age benefit, or of invalidity benefit? Clearly the old country should bear a large part of the cost of such pension. The material question is whether a) the new country should carry the administrative responsibility and, if it approves the claim for invalidity benefit, it should make the due payment, claiming a substantial contribution from the old country or whether b) the old country should make the assessment and pass on the amount of the benefit for payment by the new country. In reality, of course, the assessment of invalidity will have in fact to be made in the new country,

since the invalid is there present, and it is perhaps better to place the administrative responsibility on the country making the assessment. In either case, efficient operation depends on confidence between the old and new countries' systems and the suggested solution has the advantage that, in case of a dispute, the beneficiary is receiving benefit until a decision has been made.

The principal alternative system would be that based on Social Insurance. The difficulties and dangers of the adoption of this principle lie in the lack of any initial presumption of benefit. Thus, if we may apply this principle to the problematic situation which we have just been considering, before any benefit could be paid, it would be necessary to ascertain under which country's system he had been compulsorily insured. It would be difficult to discover any criterion by which overlapping or underlapping could be prevented, unless it were connected with territorial residence: it can be concluded from this that even a system based on the Social Insurance principle would have to call in aid territorial principles.

407. Ordinary Residence as solving secondary liability.

We have suggested that for the second problem B) "on what principles should ultimate liability for benefit be decided" the proper solution lies in the principle of ordinary residence. The theoretical principle behind this solution lies in the broad meaning of "residence" to include all those residing within the particular jurisdiction who have contributed in such a way (whether by

employment, gainful activity, financial contribution, or who have resided for a sufficient length of time for such proof to be unnecessary) as to make the payment of benefits by the nation's social security system just and equitable.

The breadth of this definition may seem surprising in view of the restricted scope and extensive exceptions found in early principles of coverage. It is important to make clear, however, that this general principle is in line with the modern trend to state a general principle of coverage and carefully to define the contingencies for which benefit is paid. The political and social advantages of this method are clear, since such a system can truly claim universality and yet is not guilty of payment of benefit where it is not due.

The distinction between "residence" and "ordinary residence", however, opens a more difficult problem. At what stage does mere physical presence in a country bedome ordinary residence. This is a problem familiar to the Private International Law student, who is continually concerned with the problem of domicile. The Social Security Law student is faced with the same problem in that it is essential that there is no period during which the individual is not resident in some country or other. Otherwise a claimant may be prejudiced in his claim owing to his presence for a short time in a foreign country which was not recognized by his home country or the foreign country as residence. On the other hand, where such presence was recognized as residence by both countries, double benefit, with its consequent waste, might be paid.

It is clear, therefore, that definite rules must be laid down which can be easily applied in the same manner in each country. There is very little precedent to assist and general principle must be applied. The suggested rule is as follows:

"A claimant is assumed to be resident in the country in which he has been most recently present for a period of 6 months unless and until:-

A) he pays contributions to a Social Security Institution of another country in respect of any contingency, in which case he is deemed to be resident in that other country for the purposes of that contingency: or B) he is employed in another country, in which case he is deemed to be resident in that other country: or C) he has been physically present in another country for a period of 6 months in which case he is deemed to be resident therein."[54]

Many parts of this rule need clarification. The time of 6 months is clearly open to objection on the grounds that it is too short for some contingencies and too long for others. However this was the period accepted in the Social Security Agreement between Australia and New Zealand and is probably the fairest compromise.[55]

"Present" must be defined so that daily employment outside the country in which the claimant has his home is not included, since otherwise clause B) has no meaning. Some difficulty is to be expected over clause B), since it may clash with either clause A), either directly, or by inference, and it may also lead to difficulties over the

payment of benefits to dependents. Thus let us suppose that the claimant works in country X, but lives in country Y with his wife and family. According to the rule suggested, he will be deemed resident in country X, though his family are deemed resident in country Y. Is it thus a satisfactory result that country X is liable for the social security of one member of the family, and country Y of another? The apparent difficulties, however, can be easily resolved when the true nature of the coverage of dependents is considered.[56] Suffice it to say that short term benefits should be related to existing wages so that no more difficulty exists in the support of dependents than exists in the case of normal wages: and in the case of long term benefits, which should not be related to economic activity, each member and each dependent should have a claim in his own right.

The difficult decision inherent in clause B) is whether employment or residence connects a man most closely to the society in which he exists and which must be divided by the artificial line of nationality. On the whole, where the financing of social security is not by contribution, it is by taxation connected with employment and it therefore seems that the place of employment should have a natural priority. Where country X has a contributory scheme of financing and country Y a taxation scheme, the claimant will have the choice to abandon the contributions and to rely on country Y or continue the contributions and thus be deemed (pace clause B)) to be

still resident in country X through the inferential meaning of clause A).

408. Alternative principles for secondary liability.

Two main alternative principles have been put forward for a basis of coverage. The first advocates coverage of Employed persons only. The numerical superiority of the Employed in most communities over the self-employed has enabled the former to obtain an income protection to which they have no special claim, save that generally they represent a section of the community least able to look after itself. In some instances the admission of a distinction between Employed and Self-employed has allowed the attempt by some countries of Eastern Europe, as, for example, Poland, to maintain that all Employees should be protected before any protection is granted to the Self-employed. The injustice of this can be seen in any Southern European or Latin American country where the bulk of the population is constituted by Agricultural Peasants: the political implications of such a false principle lie in an attempt to reduce all the economically active to the position of Employees of the State. The acceptance of the Employment principle has also been advocated on the grounds of administrative convenience, but it is clearly inappropriate that temporary difficulties be confused with general principle.

A second alternative principle sometimes suggested for coverage is that of gainful activity which has been

previously mentioned as underlying many of the existing European and South American national schemes. The greatest difficulty in this principle lies in its treatment of dependents, who constitute approximately 60% of the population.[57] Under the Residence principle, each person has a claim to benefit in his own right (subject to exclusion by the definition of the contingency) whereas under the Gainful Activity principle 60% of the community must found their claim on another person's activity. Many are the difficulties which attend this aspect of the problem. Is the definition of Dependents to be drawn strictly or with latitude? If the latter, what members of the community is it intended to exclude? Is an unmarried woman brought up to live on the earnings of a previous generation really a less worthy recipient of an old age pension than one who has not had that capital advantage? Again, since the contributions of an Employed or Self-employed worker do not vary according to the number of his dependents, so must the latter share equally in one benefit payable to all dependents?

In the same way it is often argued that Dependents should not be included in any event, since they are not recognized by the wage system. The truth of this argument will be seen when the nature of short term benefits is analyzed,[56] but the force of the argument appears when the wage earner is employed in one country but his dependents reside in another. The practice in

some countries is to require a separate (though usually shorter) qualifying period for Dependents before they can receive benefit: this solution, however, clearly departs from the theoretic basis of the dependents' right to benefit.

The preceding arguments are directed towards acceptance of the Residence principle as the true basic principle for the scope of protection. We must now consider the extent to which this principle has in practice been so accepted.

411. International Practice: Basic principles of national schemes.

Does a survey of the international scene show that these principles are widely accepted? A sample of 36 of the more significant social security schemes in operation shows that 25 have Employment as their basis, of which 5 have subsidiary Assistance schemes covering all Residents and the remainder are primarily based on Residence. The latter are almost entirely found among the countries of Europe or European stock and predominate in the countries of Northern Europe and the British Commonwealth. It would be tempting to suggest that it is the older schemes which have developed into schemes protecting all residents, but there seems to be no evidence to support this. It is true that the vast majority of the new schemes are based on Employment, but one at least[58] is based on a variation of the Residence principle. The truth seems to be that the number of years a scheme has been in existence does not seem to indicate the state of its development: internal political pressures seem to have greater influence, in that concessions made to certain sections of the community in order to mitigate hardship often lead to demands for the extension of those concessions in directions where equivalent hardship does not exist: by this means the normal development from Social Assistance to Social Security is accelerated.

412. National Schemes based on Residence.

We have referred, in discussing basic principles, to the influence of social and political conditions on the

shaping of national schemes. In the case of Residence-based schemes, such conditions may force the acceptance of some limitation of the principle, as by a limitation to those with insufficient private means to tide them over the period of the contingency or to allow them to meet the extra expenses occasioned by the contingency, or a limitation to residents of small means, at least for those contingencies which involve loss of earnings. This is the case in Australia, Canada, Denmark, New Zealand, for example, except that employment injury insurance is rarely subject to income limits.

Of the countries in this category, 10 (as opposed to only 2 based on Employment) provide for extension of coverage on the basis of reciprocal treaties. On the other hand, 5 provide initially only for the protection of nationals, though all of them include the reciprocal treaty provision. The other limitations found in the Residence-based systems are concerned with particular local conditions, as that of the presence of various racial groups or aboriginal tribes. The Danish scheme requires the claimant to be a member of a sick fund, and the United Kingdom requires employed married women and non-employed persons of low income to have specifically chosen to be protected.

Only the United Kingdom has achieved universal protection in this way. The legislation in Iceland provides for universal protection against biological contingencies but unemployment is not at all covered.

In Sweden, legislation on the books covers all resident nationals and nationals of other Scandinavian countries resident in Sweden against biological contingencies with the exception of abstention of work due to maternity and death of a breadwinner from a cause other than employment injury, for which protection is only afforded to persons of small means. Unemployment insurance is voluntary. Finland protects all residents in respect of a condition requiring medical care due to maternity, child maintenance and old age, but not in respect of short term abstention from work except for a maternity grant. Denmark, through the voluntary subsidized system, protects the majority of residents of limited means in short term contingencies. Old age pensions, subject to a means test, are universal for citizens; this is true of invalidity, but for death of a breadwinner only where this is due to employment injury. Unemployment insurance applies to employees of small means, though there is no income limit for admittance to membership. Australia and New Zealand follow the same lines, since they cover all contingencies except maternity, though the means test is applied for contingencies involving abstention from work or loss of earning capacity. In New Zealand residents receive family allowances irrespective of means, and in the same way medical benefit and a reduced old age pension. In Australia all residents are covered by hospital benefits and children's allowances. Both these countries have employment injury allowance schemes. An interesting

development in the Australian scheme arises from the fact that though sickness benefit is theoretically not confined to employees, it has been required as a condition of payment to an independent beneficiary that he close down his establishment. Long term biological contingencies are also restricted to citizens. Canada pays family allowances to residents, but old age pensions require a means test, which is also applied in the case of unemployment insurance. Switzerland has old age pensions for residents and non-resident citizens and subsidized sickness schemes for residents, though in some areas a means test is applied. It is noticeable that social security systems based on Residence are most complete as regards biological contingencies and long term risks, although in neither case has the temporary reduction of standard found in the means test been completely eliminated.

413. National Schemes based on Economic Activity.

The second group of countries, those preferring extension to all gainfully occupied persons and their dependents, seem on analysis to show many examples of the techniques of temporary limitation outlined above. Examples among the more recent schemes are gound of restriction to employees in industrial and commercial undertakings, since these establishments are more accessible to supervision than agricultural undertakings and contributions can be collected by employers without undue administrative difficulty. Where even more stringent restrictions have proved necessary, a minimum number of

employees per firm is set below which the compulsory legislation does not apply. Alternatively the restriction may be in terms of industrial areas of a minimum size of population or in specified cities of a known degree of industrialization. In addition, in older schemes, we find examples where the class of gainfully occupied persons is cut down by the exclusion of non-manual workers, or of public employees, or of those earning above a certain limit, or of the self-employed. In other cases the class of wage earners is increased by the inclusion of Salary Earners (in 57 cases), the Self-Employed (8 cases), sometimes with the imposition of maximum (in one case minimum) earning limits. A number of schemes exempt domestic or agricultural workers but a tendency which has developed since the war to include classes of person usually covered by special schemes (as public employees) and to regard the special schemes as providing an extra pension: previously such schemes had been specifically excluded.

No country has yet applied its social security systems to all gainfully occupied persons and their dependents. Czechoslovakia applies this test to all biological contingencies, but for family allowances and unemployment employees only are covered. France applies the test to family allowances, but unemployment benefits carry a means test and biological contingencies are covered only for employees. Old age alone covers those working on their own account. Bulgaria protects employees for all contingencies, but urban independent workers for maternity,

sickness invalidity and old age and farmers for the latter only. The Guatemalan scheme aims at the protection of all gainfully occupied persons against biological contingencies, but at present only sickness due to external injury has been covered for urban employees. Belgium protects employees in all contingencies to which they are exposed. Independent workers are entitled to family allowances. Other residents can insure against biological contingencies. Poland covers employees for every contingency, but landowners of small means only against sickness invalidity or death from employment injury. Austria has for employees protection against all biological contingencies plus unemployment and family allowances; independent workers only for sickness or invalidity arising from work and maternity. Luxembourg similarly restricts sickness and maternity to manual workers and others below certain earning limits and gives unemployment benefit to urban workers subject to a means test. In the Netherlands, employment injury and family allowances cover all employees, but only those with incomes within certain limits are liable for insurance against unemployment old age and maternity and sickness invalidity and death not due to employment injury.

On the American continent, Chile, Columbia, Mexico and Panama do not cover unemployment and child maintenance, but include independent workers along with employees. The Argentine, Dominican Republic and Ecuador insure employees only, chiefly in biological contingencies. Protection is

restricted to employess in specified, chiefly urban, occupations in Brazil, Cuba, Greece, Iran, Portugal, Turkey, the United States and Venezuela. Unemployment insurance is also provided by Greece, Portugal and the US. Peru provides insurance for manual and non-manual employees in all biological contingencies.

The limitation to employees is, as we have said, the rule in a number of countries now embarking on social security. India has restricted coverage to factory employees of limited earnings against sickness, invalidity, or death of a breadwinner resulting from employment injury, sickness from any other cause, and maternity. It is planned to extend this to dependents of factory workers, to all employees and finally to other contingencies. Haiti also plans to insure employees in the event of maternity sickness and injury during employment, but without income limit.

Mention has earlier been made of the decisive position occupied by Dependents in schemes based on employment. Often national laws provide maternity and invalidity care for Dependents. Many states, however, do not provide this protection and, if at all, protection is only available under medical assistance schemes. Countries in this position include Columbia, the Dominican Republic, Ecuador, El Salvador, Guatemala, India, Ireland, Panama, Peru and Portugal, though, in the first two, dependents' wives are entitled to obstetrical care. Where the contingency of

death of the breadwinner arises, children are protected if a scheme is in operation; but the widow only for certain where death is due to employment injury. We shall see later that there are often stringent benefit conditions applied, as for motherhood age or working capacity.

414. Coverage under the Philadelphia Recommendations.

Before turning to the discussions which led to the 1952 Convention, we must take a brief look at the 1944 Philadelphia Recommendations. We have seen, in summarising the historical aspect, that the early conventions depended, in respect of coverage, on extensive exception clauses. By 1944, however, the tendency in international thinking was to leave the detailed exceptions to national legislation, but only so far as was necessary to prevent abuse. Thus Point 17 of the Recommendations provides for:-

"protection, in the contingencies to which they are exposed, to all Employed and Self-employed, together with their dependents, in respect of whom it is practicable a) to collect contributions without contributing disproportionate administrative expenditure and b) to pay benefits with the necessary co-operation of medical and employment services and with due precaution against abuse."

This definition is of great interest for two reasons. In the first place, a development towards the principle of universality can be seen by contrast with previous Recommendations and Conventions, though it is not yet complete, since the general world development is not yet

thought to be sufficient to allow the compulsory inclusion of the "difficult" or "marginal" cases covered by the Residence principle but not by the principle of Economic Activity. On the other hand, one would have thought that the inclusion of a general exception for under-developed countries in the general principle would have allowed a more complete formulation of that general principle. The best view is probably that at the stage of development at which International Social Security thinking had arrived in 1944, the Economically Active principle seemed to be the ultimate destination of the movement.

The second point of interest in the 1944 definition lies in the clear recognition of the necessity of reducing the standard of scope required of lesser developed countries. This requires a compromise between the need for flexibility in order to deal with the different problems found in different regions and the need for conciseness and preciseness in the wording of international Conventions. As a statement of principle, proper to a Recommendation, point 17 leans towards the former. In later international thinking, this problem is considered quite separately and does not remain part of the general definition of coverage which is left in general terms.

The second part of the 1944 Recommendation deals with Social Assistance for those not covered by the first part of the Recommendation. Point 28 covers dependent children, Point 29 Invalids, aged persons and widows. Point 30 provides for general assistance by way of

"Appropriate allowances in cash or partly in cash and partly in kind" to be provided for "all persons who are in want and do not require internment for corrective care". The importance of this residual Assistance scheme depends partly on the coverage of the main schemes which it is designed to support. As will be seen on consideration of the administrative problems of social security, it seems a happy solution to combine this provision of residual assistance with the separation of discretionary benefits from the non-discretionary non-deterrent benefits provided as of right.

A similar approach is to be found in the Recommendation No. 69 concerning Medical Care. This Recommendation represents the second half of the deliberations of the Philadelphia Conference. In form it is very different to the Recommendation concerning Income Security, since it is concerned more with the social and administrative problems of creating medical services than with the exact definition of the services to be provided by each country. Part II is concerned with the scope of protection. Point 8 requires medical care to be extended to all members of the community whether or not they come under the category of the gainfully employed. Point 9 provides that where a scheme is limited to a section of the population or a specified area, or where there is in existence a contributory mechanism for other branches of Social Security and the mechanism is so constructed that it is possible ultimately to bring in the whole or the majority of the

population, it may be appropriate to adopt a Social Insurance Scheme for Medical Care. On the other hand, (point 10) where the whole population is to be covered, a public service may be appropriate. Social Assistance is required under the principles set out in Points 11 to 16. Thus (point 11) all members of the community should have the right to care as insured persons or, pending inclusion in Social Insurance, the right to care at the expense of the competent authority if they are unable to provide it for themselves. Similarly (point 12) relief should be given as to the payment of contributions where this would bring hardship to persons barely having the means for subsistence.

In respect of medical care, therefore, it is clear that international thought has accepted the principle of residence as the appropriate criterion of coverage. Further evidence of this will be apparent when we consider the 1952 Convention in detail.

415. The Social Security (Minimum Standards) Convention 1952.

Such was the progress of international thinking up to the end of the second world war. The years 1946 to 1948 were a busy time for national Social Security Legislation and the experience of these years seems to have led to the suggestion that the international requirements for the scope of protection should vary in accordance with the contingency being considered. The discussions preparatory to the Convention proceeded on that basis.

In order to produce a Convention which would have a chance of acceptance by the greatest number of nations it

was suggested in Report IV (1) that the Convention should recognize the divergent approaches which have been outlined and should attempt to enter for each accordingly. Those nations aiming at the protection of all residents might be allowed to restrict their coverage to residents with limited means exposed to the contingency in question. Where the ultimate aim is to a basis of social insurance, the limitation might apply to the means of the insured during periods when he is not suffering from the contingency in question. An exception to the suggested rules was put forward with regard to the provision of a national health service providing medical benefits in any condition requiring medical care, on the grounds that since no cash payment is made a limitation to persons of small means would be inappropriate.

Difficulties would, of course, be experienced in the operation of these rules, since under-developed countries would be forced to commence with protection in specific localities. For such cases, the suggestion was that ratification should be possible when the service is available to 50% of all residents without income limit or means test.

For those states aiming at the eventual protection of all gainfully occupied persons and their dependents, the suggested limitation is to employees in industrial and commercial establishments, since this group poses the least administrative complications and perhaps the greatest need. It will be remembered that this is the standard required in certain of the pre-war conventions. Dependents

should also be protected in this category from contingencies requiring medical care, or resulting from the death of the breadwinner. Even so, a further restriction may be found necessary in the least developed countries, since it may apply to many factories where there is not a developed system of factory inspection. It was therefore suggested that a further limitation to 50% of such employees be permitted.

On the other hand the International Labour Office felt that some states might prefer to commence with a system giving social security to agricultural workers and their dependents; therefore, in order to retain the flexibility of the draft convention, a standard of 50% of gainfully occupied persons was suggested, with a temporary restriction to 25%. The further temporary standard of the use of the means test would only apply where all residents were covered and for cash benefits only.

These observations were circulated to the member nations of the ILO and were accepted by 9 out of the governments who replied, though it was pointed out that the three alternatives are not equal in weight. An important, if regressive, point however was made by a number of governments who felt that it was necessary to relate the scope of protection more clearly to the contingencies covered by each branch and to define these contingencies with more precision. Some governments felt that the means test should be permitted in the second alternative, or that the discretion left to the governments

concerned in respect of this test were not stringent enough. There were, of course, wishes expressed that the standard should be raised or lowered. From these replies, the International Labour Office made the unfortunate proposal that instead of a single definition of the scope of protection, there should be a separate definition for each branch of social security: further, the three formulae were condensed into two. Thus branch (a) which covers a general medical care service is to cover all residents, but as regards the other branches, it was to be left to the national legislation to limit the scope of protection to certain classes of gainfully occupied persons, provided that the prescribed proportion was covered, though dependents wives and children must be entitled to medical benefits under the branches dealing with sickness and maternity and also survivors pensions under the branches dealing with this benefit. On the other hand, a member might choose to protect all residents subject to a means test, though such test could not be applied in the case of employment injury benefit. At this stage, no percentage figure was suggested, since it was thought that the number of persons protected could not be readily determined before the contingency occurred. The percentage of the population to be covered was fixed at 50% of the gainfully occupied, since this was thought to represent 20% of the population.

We may note in passing that the ratio for different countries of active population to total population based on the Demographic Yearbook of the United Nations for 1948

is as follows:

Australia 40.6%	Belgium 43.9%
Mexico 29.8%	Czechoslovakia 44.7%
England and Wales 44.6%	Yugoslavia 60.3%
France 47.1%	Italy 38.1%
Netherlands 38.0%	New Zealand 38.1%
Peru 34.88%	Sweden 42.5%
United States 38.4%	

Thus the percentage seems broadly to increase with the increase of industrialization.

The suggested percentages were therefore:

a) 100% of residents for medical benefits in any condition requiring medical care;

b) 20% of residents for medical benefits to the gainfully occupied and dependents with sickness allowance to the former, for old age pensions, for general family benefits, and for invalidity benefits;

c) 50% of employees for unemployment benefits and for medical benefits, sickness allowances and invalidity pensions to the employee and survivors pensions to his dependents;

d) 20% of residents for medical and cash maternity benefits for the gainfully occupied or, if a man, medical benefits for his wife and for survivors pensions to the gainfully occupied person's dependents. In order to calculate these percentages, only the gainfully occupied are to be counted, or in the case of family allowances, the breadwinners

No attempt was made to fix income or means, since this was thought to be a hindrance if too rigidly prescribed. The proposals contained however a stipulation that, where the full benefits are to be reduced if income exceeds a certain figure, a substantial amount must be exempted in the assessment of income to be deducted. A further requirement introduced was to the effect that a scheme must have covered the prescribed percentage for three years before ratification.

It was further thought that the temporary standards suggested in the original questionnaire had been set too high, and it was therefore proposed to have only one such standard, set at 50% of the employees in undertakings subject to labour inspection. No temporary exception, however, was envisaged for the branch concerning a national health service.

These firm suggestions brought forth an instructive variety of views from the member nations. On the question of the basic principle of coverage, it is interesting to note that countries as unlike as Sweden and Argentina would admit the ultimate protection of all residents only, though recognising the importance of the other standards as temporary principles of coverage. The Swiss government supported this argument, though subject to certain reservations. On the other hand Brazil, Ceylon and Chile preferred the principle of the protection of employees, and Poland felt that this should be attained before independent workers were covered. The latter views, as we have seen,

are inappropriate for a developed system. Norway seemed to waver from the Residence principle by opining that it should not apply to unemployment benefit. As we shall see, acceptance of the latter is not inconsistent with the general principle.

Other strong views were expressed on the question of the means test. Luxembourg opposed such a test on the grounds that it produced financial and moral consequences likely to prejudice the principles of social security laid down in the draft convention. France, New Zealand, the UK and the US thought it was the means possessed during the contingency which were of importance, and further stressed that employment injury should be excluded from this alternative. The UK thought such generalization of scope dangerous, since cash benefits were only meant for the gainfully occupied and employment injury and unemployment benefits only for employees. The US thought that an income limit, as opposed to a means test, was more appropriate under the limitation to the gainfully occupied. France, Italy and New Zealand proposed methods of determining the limit up to which the means test could be applied, since they thought the conventions should not leave each country with a free hand. The Netherlands wished to admit an income limit to the alternative of protecting employees in industrial and commercial undertakings.

Opinions as to the scope of protection required for a general medical care service were in the majority for the refusal of any lesser standard. A temporary exception was,

however, suggested, since it was thought this would provide more incentive for the creation of a service covering the whole population. The United States also argued that there was no logical reason why an income test should not be accepted under this branch. This subject was further discussed by the Conference Committee on Social Security which though it had at first adopted the idea of a medical service covering every condition requiring medical care and protecting the whole population, subsequently preferred the solution which separates medical care and cash benefits in respect of a morbid condition. The original branch (b) which provided for medical benefit in case of sickness and for sickness allowances was divided into two branches, one providing medical care in any condition requiring medical care, including maternity, and the other providing cash benefit in case of incapacity to work due to a morbid condition. Branch (a), dealing with a public medical health service was thus deleted. In the test of the convention proposed by the report the subject matter was arranged by contingencies and this new arrangement proposed by the Committee was retained. The scope of protection for conditions requiring medical care has thus become separated from the scope of protection for incapacity to work. It was further felt extremely difficult for the ILO to verify whether a medical service complied with the condition that medical benefit should be available to all residents whose means are such that they would be entitled to cash benefits in respect of sickness since no such benefits might be

payable or since they might be payable under compulsory or voluntary insurance. Nor does it follow that under medical assistance the beneficiary is incapacitated from work, so that the means taken into account would include his normal earnings and not his means during suspension of earning.

These considerations led to the proposal that for purposes of ratification, protection might extend either to classes of the economically active population representing not less than 20% of the community and their dependents as well, or classes of residents comprising not less than 50% of the population, without a means test. A second alternative was proposed to suit countries whose scheme covered all residents, in which case the requirement would be that 50%, rather than 20%, of the community should be covered, since in this case dependents were being counted in their own right. This alternative would also be available to members with a public medical care service, even though it is established only in certain areas, provided that half the population is covered.

421. Coverage by individual contingencies.

It has become clear in the previous discussion that the scope of protection differs very much in relation to the different contingencies covered. It will be convenient, therefore, to follow the final discussions in relation to each contingency separately.

A) Conditions requiring medical care: In their comments on the draft convention several states suggested the provision of more restricted benefits for a larger proportion of the population. Numerous amendments were suggested of an unimportant nature. One difficulty was shown by a statistical analysis of the proportion of economically active and employees to the total population. We have seen above how the percentage of the economically active population to the total varies from 60.3% in Yugoslavia to 29.8% in Mexico, the industrialised countries rating between 40% and 50%.[60] The percentage of employees to the total population varying from 38.0% in Denmark to 8.7% in Yugoslavia, the industrialized countries rating between 30% and 35%. The percentage of employees to the economically active population varies from 76.6% in Australia to 14.4% in Yugoslavia, with the industrialized countries rating between 65% and 75%. It will be seen from these figures that the alternatives provided in the draft convention are somewhat unreal if they are intended to be equal in coverage.

It follows from these figures that a country may be covering 50% or more of its employees without covering 20%

of its population. The figures also show that the minimum standard of 20% is rather high as a goal for the undeveloped countries at the present, since even the protection of all their employees would not always allow them to attain that percentage. It was therefore proposed that as a further alternative, protection of 50% of all employees should be allowed as a condition of ratification. The advantage of this method is to provide a sliding standard which will increase with the increase in industrialization since it is usual that the number and percentage of employees increases as industrialization progresses.

The ILO also felt that it was preferable to provide a full range of benefits for a restricted number of individuals rather than to cover the whole population with only a few benefits, since the health of the persons protected must be protected in its entirety by a well-balanced service. The minimum standards could not be attained on the basis of a social assistance scheme, owing to the difficulties of ascertaining compliance with the standard.

When the draft reached the 1952 Conference, it was first considered by the Committee on Social Security. The Employers group argued (as they had done in all previous discussions) that the ILO had no competence to extend the protection beyond the scope of employees, or, if there was such competence, such extension should be embodied in a separate instrument. The Employers further moved amendments deleting the provision allowing scope to be

restricted to 50% of the employees of establishments of a certain size. The workers members also wished to delete this provision, since employees were already taken care of in the alternative providing for protection of classes of the economically active population. These amendments were not carried and the Office text was approved.

At this stage, therefore, the draft Article required the protection of a) prescribed classes of the economically active population, constituting not less than 20% of all residents and their wives or children or b) prescribed classes of residents, not less than 50% of all residents or c) as a temporary standard prescribed classes of employees constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more together with their wives and children.

At the 1952 Conference, South Africa objected to use of a method of defining by percentages, since this required the continuance of wasteful statistics. It is interesting to note that in this country where the native population is tribalised, responsibility is considered to remain with the tribe, though where the native resides in a city the state is considered responsible. Canada preferred the provision of some medical facilities for the whole population rather than all facilities for only half. Poland pointed out that requirement a) permits indistrialised countries to omit agricultural workers which would be included by obligation in only the predominantly agricultural countries. It would also allow independent workers to be preferred to

employees. Because of the variation of the percentage of employees in each country, a further alternative of 50% of employees was introduced so as to meet these objections by emphasising the importance of the protection of employees. This new alternative will reduce the difference between the temporary standard and the normal, minimum standard. The International Labour Office also thought it important to treat a person's health in its entirety, and therefore did not accept the suggested partial service for the whole population.

At the final meeting of the Conference the text was officially adopted as Article 9 of the Convention. The alternatives allowed are therefore

"a) prescribed classes of employees, constituting not less than 50% of all employees and also their wives and children

or b) prescribed classes of the economically active population, constituting not less than 20% of all residents and also their wives and children

or c) prescribed classes of residents, constituting not less than 50% of all residents

or d) where a declaration made in virtue of Article 3 is in force, prescribed classes of employees constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more and also their wives and children."

B) Sickness: The scope of protection in cases of sickness is covered by draft Article 14, which proposed three

categories to cover a) prescribed classes of the economically active population constituting not less than 20% of all residents

b) all residents subject to a means test in accordance with Article 65 or

c) where a declaration made under Article 3 is in force, prescribed classes or employees constituting 50% of employees in industrial workplaces employing 20 persons or more.

Naturally the same objections must be read in this Article as in the comments on the previous Article 9. A further alternative was, however, suggested to cover the variation in working structures disclosed by the statistics which we have quoted; this would allow ratification where protection covered 50% of all employees. A further amendment was made to test b) referred to above to include all residents whose means during the contingency do not exceed a limit prescribed in such a manner as to comply with Article 62. The effect of this is partly to keep pace with a renumbering of the later Articles, but also to ensure that this permits compliance with the proposed convention on the basis of social assistance. No further amendments took place and the article was incorporated into the Convention in this form.

C) Unemployment: The scope of protection suggested for unemployment benefit is covered by draft Article 20, which proposed categories similar to those in Article 14 except that 20% of the economically active population is replaced

by prescribed classes of employees constituting not less than 50% of all employees. The Polish government thought this latter standard too low. The Swiss government, however, thought that 50% should be reduced to 40% unless "employee" is defined as a person who engages in regular gainful activity as his main occupation. Otherwise voluntary schemes might have difficulty meeting the standard in a country where a large number of employees are employed in an accessory capacity only. This suggested reduction to 40% was adopted and a further amendment was adopted altering "residents" in standard B) to "employees". The final text, however, did not contain either of these amendments.

D) Old Age: The standard here suggested was identical with that suggested for sickness benefit. A similar amendment was made, referring to Article 62 and admitting the social assistance type of benefit and also to introduce a fourth alternative requiring the protection of not less than 50% of all employees. This was the form eventually adopted. In the debate at the Conference, Poland and Argentina felt it more important to cover all residents, though the latter would apply a means test whether or not contribution conditions have been fulfilled, but it will be seen that provision is made in b) for this kind of scheme.

E) Employment Injury: A 31 and A 32 require the provision of benefit to a) prescribed classes of employees constituting not less than 50% of all employees, or b) where a temporary

standard is accepted, such employees as above who work in workplaces having 20 employees. Poland and Yugoslavia proposed that all employees should be protected, though the former agreed to the exceptions provided in two of the pre-war conventions.[61] But these suggestions, it was felt, belong more appropriately to the advanced standard. It was also argued that the reference to the pre-war conventions was not always appropriate, since in the present case the requirement was that more than one branch of social security be in operation before ratification and that therefore the same high standard might not be appropriate in each individual case. Further than this, it should be remembered that the two pre-war conventions covered industrial and agricultural workers respectively, so that even before the war there was no requirement to provide cover for all the employed population in one instrument. A 31 and 32 were adopted as originally drafted.

F) Responsibility for the maintenance of children: The original text proposed in the case of family allowances to cover prescribed classes of the economically active, covering 20% of residents, or prescribed classes of residents to the same percentage, or, as a temporary reduction, prescribed classes of employees constituting not less than 50% of all employees in workplaces employing 20 persons or more. For the reasons expounded under the branch on sickness a further alternative was included allowing 50% of all employees to be protected and deleting the second class constituting 20% of all residents, since this did not seem to be sufficiently

precise. It was felt that only adult residents who have an income and are therefore actual or potential breadwinners could properly be regarded as persons protected by the benefit. The final text therefore covered 50% of employees, classes of the economically active not less than 20% of all residents, or as a temporary reduction, 50% of employees in workplaces employing 20 persons.[62]

G) Maternity: The preliminary standard here envisages all women in prescribed classes of the economically active population who constitute not less than 20% of all residents and for medical benefit the wives of men in these classes or, where the temporary reduction is in force, 50% of all employees in industrial workplaces employing 20 persons ~~and~~ and medical benefits for the wives of men in these classes. A query was raised here by the Federal Republic of Germany which intended to extend maternity benefit for women insured but to exclude domestic servants, and which requested to know whether this would be compatible with the proposed convention, since other insured women constitute more than 20% of residents. The ILO confirmed that this would be compatible, since there was no requirement that any particular category should be protected. The Committee on Social Security at the 1952 meeting of the ILO did not adopt an amendment to withhold maternity benefit from a wife maintained by her husband. The final text gives the option of either 20% of all residents, as referred to above, or to all women in prescribed classes of employees constituting 50% of all employees. These Articles were

incorporated into the final text.[63]

H) Invalidity: Articles 51 and 52 define the scope of protection as extending to a) prescribed classes of the economically active constituting 20% of all residents b) all residents subject to a means test c) under the temporary standard 50% of employees in workplaces employing 20 persons.

Canada wished to extend this scope to include the dependents of all persons protected except those for whom family allowances were paid; the difficulty being that a person may contract the disease leading to invalidity before ever becoming a member of the economically active population. The ILO however felt that this would be covered under alternative b). Other amendments were adopted in line with those adopted for sickness benefit.

I) Death of Breadwinner: In this case the suggested text covered a) the wives and children of breadwinners in prescribed classes of the economically active population constituting not less than 20% of all residents, or b) resident widows and children who have lost their breadwinner subject to a means test, c) under the temporary standard, the wives and children of breadwinners constituting not less than 50% of employees in industrial workplaces employing 20 persons or more. By amendment the fourth alternative was added, as in other branches, allowing coverage of 50% of all employees. This was the form finally incorporated into the convention. During the

debates, Ceylon proposed that ratification be allowed on the basis of provident schemes, but this was not accepted.

431. Advanced Standard: standards achieved in advanced countries.

We may now turn to a discussion of the principles to be embodied in the advanced standard. It will be remembered that report V(b) which contained the most informative discussion on advanced standards was prepared at a time when the final amendments which were eventually incorporated into the Minimum Standards Convention had not been finally adopted. Particularly the discussion of advanced standards reflects the fact that social security often begins with the protection of employees and that as a country advances along the path to industrialization the percentage of employees to its total population frequently rises from 15% to 30%, thereby doubling the scope of protection without any change in the method adopted. This increase, without extending the administrative system, may be fourfold or greater where the temporary reduction has been called in aid. Where dependents are insured in their own right, or where medical care is provided by a public service, this often provides protection for 50% of all residents, since generally speaking dependents equal about 150% of the total economic population. It can be seen therefore that the consideration of an advanced standard required a careful survey of the percentages in fact achieved in the different countries.

Thus as far as conditions requiring medical care are concerned there is a great similarity with short-term

biological conditions, though in some countries the scope of protection differs. Thus in Norway, medical care covers 41.7% of the population, but sickness only 30%. In the United Kingdom, Australia and New Zealand, the whole population is covered and in Switzerland and the Scandinavian countries approximately 60%, whereas in the other European countries 20% is the approximate figure. Outside Europe, Chile alone has a substantial figure.

As far as short term biological contingencies are concerned, the emphasis has been on provision for employees, and in some European countries the percentage of employees covered in case of sickness, maternity, and a condition requiring medical care is high. In Belgium and Luxembourg it reaches 80%, 74% in the Netherlands, 57% in France, 95% in Germany and 86% in Austria. Switzerland, Scandinavia and the UK rate around 40%. It is interesting to notice the contrast here between the provision of medical services and of cash benefits, with the leaders in the first field coming somewhat behind in the second.

Outside Europe, Australia and New Zealand apply a means test. Otherwise, Chile alone passes the 10% mark.

In the case of long term biological contingencies, there are few countries which have not extended old age protection outside the ranks of employees. Among those who insure employees only, Belgium covers 78%. In the Netherlands, employees insurance is compulsory, but approximately 30% of the population is covered by the additional voluntary insurance. These figures give an

average coverage for western industrial countries of about 25%. This figure is exceeded by Switzerland, Sweden, New Zealand and Canada who provide a pension for all residents, and the United Kingdom providing 44% with contributory pensions, though in common with Canada, New Zealand, Sweden and some other countries having a supplementary scheme for those of small means.

Under the heading of employment injury, the UK and France cover 100% of employees, though in other European countries a figure around 75% is recorded. For unemployment benefits the figure tends to be low in those countries in which is voluntary, 40% being the approximate figure. Where, however, insurance is compulsory, figures of 80% are more common, the UK reaching 96%. Japan also reaches the 50% line under this heading.

For child maintenance, Canada, New Zealand, Sweden, the UK, Australia and Norway have a 100% coverage. France covers the gainfully occupied, which includes approximately 51% of the total population. The Benelux countries cover a high proportion of their employees, but this only amounts to about 25% of the population. Poland comes near this figure, but beyond these countries, child maintenance has not yet become an important factor.

432. Advanced standard: ILO proposals:

A wider survey shows that though social assistance alone cannot be considered as a satisfactory means of providing benefits under an advanced standard, there is a general tendency to guarantee a minimum benefit under social

insurance or through a public service and a higher total benefit to those with insufficient means under social assistance. Report V(b) therefore proposed that social assistance be admitted only as a complementary benefit, though it would not be admitted in the case of a condition requiring medical care, employment injury, child maintenance and maternity, since in these cases no means test is admitted under the minimum standard. It was further suggested that the scope of protection should be 75% of all employees or 25% of all residents, with an alternative allowing a medical care service to protect 60% of all residents. The ILO discussions on the advanced standard with reference to the principles of Residence and Gainful Activity produced some interesting views. For example, it was noted that the difference between the two formulae would have been slight, since only the gainfully employed are exposed to the contingencies arising from loss of earning capacity. Thus medical care child maintenance and old age alone would have differed. This dual solution, however, was not generally accepted by the governments, since it was thought that there should be some relation between the scope and the contingency and that the existence of two standards which were not of equal extent was a fault. On the other hand, some governments thought that even the advanced standard should only be concerned with employees, or even only with employees of small means. Certainly the vast majority of governments think that there should be no means test applied.

Clearly, as the US points out, employment injury and unemployment insurance are appropriate for restriction to employees and their dependents, though Israel queries that only wives and children are considered among dependents. France made certain suggestions as to the standard to be proposed for each contingency which were incorporated into the draft. Seven governments wished to retain only protection of all residents as the advanced standard, though the Turkish government wished to see some method to exclude those who were voluntarily idle. Denmark wished to add a new group, covering all persons except those who had not paid direct contributions and were not in need of assistance. The United Kingdom would admit a means test in certain cases, though this is opposed by the United States, which was in favour of a social assistance programme to take care of residual needs.

The conclusion thus arrived at as to the advanced standard required protection to all employees for unemployment benefit or employment injury, to all residents for the public medical service, whereas the protection of the gainfully occupied is to be the basis of the other benefits, dependents being included in the cases of medical benefits and survivors pensions.

441. Analysis of variations between contingencies.

The ILO having taken, on the view expressed in the present discussion, an erroneous decision to redefine the scope of protection separately for each contingency, we must analyze the practical results obtained.

It is clear that five contingencies vary from the standard coverage - by which we mean the alternatives proposed for the contingencies of Sickness, Old Age, Invalidity and Death of the Breadwinner, namely - to summarise - a) classes of the economically active representing 20% of residents, b) all residents subject to a means test, c) 50% of employees or d) as a temporary reduction 50% of employees employed in establishments of 20 workpeople or over. This being the standard, the other contingencies differ from it as follows:-

1) Medical Care: The principle alteration from standard coverage in respect of medical care is the inclusion of dependents: thus alternatives a), c) and d) are extended by the addition of dependents and alternative b), all residents subject to a means test, is increased to a straightforward 50% of Residents.

2) Unemployment Insurance: Alternative a) is not considered suitable for the minimum standard and is therefore omitted, alternative b) being considered sufficient to cover those self-employed persons which it was felt should be included.

3) Employment Injury: Under this heading, however, it was considered that not even alternative b) was suitable since the very word employment would seem to exclude the self-employed.

4) Family Allowances: For this contingency, the existence of a means test made standard alternative b) unsuitable. At first an attempt was made to make the same change (to a percentage of Residents) but finally the alternative was deleted.

5) Maternity: This contingency represents a special case in two respects: although it is really only a particular instance of sickness, it differs in that it has a peculiar predictability and also that it is more convenient to consider the medical care and cash benefit aspects of Maternity separated from these two general contingencies. An example of the convenience of this can be found in the fact that Turkey has chosen to introduce maternity insurance as one of the two first contingencies to be covered. Maternity also follows family allowances in excluding the means test, so that alternative b) is not allowed. The variation from the standard coverage therefore is similar to that for family allowances with the addition of the wives of persons protected for the purpose of medical care.

The value and nature of these alternatives can be truly seen if they are compared with the social structure of a standard community. This last concept is necessarily arbitrary in view of the very wide variations between the agricultural and the industrial community and between the advanced and the backward country. It would seem, however, reasonable to accept as standard a community composed as follows:

1) Dependents	a) Persons too old to work	10%
	b) Persons too young to work	25%
	c) Persons of working age not economically active	25%
		60% . . .

. . . 60%

2) Economically active

d) Self-employed	10%
e) Employed	30%
	100%

As to class a) this figure is increasing rapidly in many western countries and is likely to continue to increase in line with the increase in medical knowledge and supplies. Conversely class b) is decreasing in the western world on account of the increase in class a) and the tendency towards the limitation of the number of children. As to class c), it is difficult to make any general statements as to increase or decrease: variation depends perhaps more on the economic position and the general social structure of each community. In times of heavy unemployment, on the one hand, the class expands, since in no circumstances does unemployment benefit cover all marginal workers: on the other hand, in time of war this class may contract as all marginal workers are drawn into economic activity. Classes d) and e) together vary according to the social structure and are high in developed industrial countries and low in undeveloped countries with high birth rates. In the latter, particularly where, as in Yugoslavia, much of the economy is peasant farming, class d) may be twice as large as class e). On the other hand in advanced industrial countries class e) may be six times as large as class d).

With this standard community in mind, we may compare the relative coverage of the alternatives set out above.

For example, we may notice that the coverage required has apparently been pitched at about the half-way mark. Medical Care, as we have seen, is to cover 50% of Residents or 50% of Employees and their dependents (which might vary between 30% and 90% of Residents) and classes of the economically active amounting to 20% of Residents and their dependents (likely to be about 50% of all Residents). In the same way, the standards for the other contingencies seem to have been aimed at a coverage of about one-half of the population who, it was thought, could eventually be covered in respect of that contingency.

442. Fallacious reasoning behind variations from standard.

This consideration leads us to the more serious comment which can be made in respect of this differentiating of coverage for the different contingencies - that is that such distinctions are basically unreal. For example, cover is extended to Dependents in respect of Medical Care (and also, though not quite in the same sense, to Maternity and Death of the Breadwinner): again the Means Test is not allowed in respect of the contingencies of Medical Care, Maternity, Family Allowances of Employment Injury. Both these limitations have an arbitrary quality about them. Although the practical necessity of including Dependents in the coverage of Medical Care as a matter of humanity is clear (apart from the administrative difficulty of ascertaining qualification in time to provide adequate treatment) there seems no theoretical reason why coverage of Dependents should not extend to Invalidity or Old Age

(for which there could seem to be a strong case) or indeed to any contingency.

It is important at this point to make clear the relationship between the scope of protection and the rate of benefit. Is the latter to be paid on the subsistence principle, or as a proportion of the claimant's income before the contingency? The answer given to that question is of importance to the present discussion for this reason: if subsistence benefit is the aim, then clearly a larger amount should be paid to a claimant with dependents than to a claimant without. If on the other hand, the aim is to pay a proportion of previous income, this argument may not carry the same weight, since the income being replaced is seldom adjusted according to the number of dependents. The inclusion of dependents in the general coverage must therefore be subject to the weakness of the argument which we have just outlined.

From this we may conclude that it is far from easy to find a principle by which the inclusion of Dependents should extend to three contingencies only. In the same way the deviations from standard coverage disallow the use of the Means Test for the contingencies o f Maternity, Family Allowances, Employment Injury and Medical Care. Again it is easy to see the practical reasons for this exclusion: in the case of the first and last, it would be administratively impossible to ascertain before treatment the means of each patient, or for the treatment to be dependent on whether the patient is poor enough to receive benefit: in respect of the

first and second the position of the children concerned must be considered. The payment of maternity and family allowances must not prejudice the children who are born into families which have sufficient income to look after the child but prefer to spend their money in other ways: in respect of the third, it must be admitted that Employment Injury is an anomaly: an anomaly which has developed for historical reasons in that this contingency was at once a clear case for state intervention and also was most suitable for the imposition of administrative controls. The element of service to one's country which has been strong in this contingency has also argued strongly against the imposition of a means test.

The third fallacious principle on which the 1952 definitions of coverage vary from the standard is based on the exclusion of the alternative of coverage of the gainfully employed from the cases of Employment Injury and Unemployment Benefit. In respect of the former, there seems no good reason why compensation for work injury should not be paid to the self-employed, though their exclusion is clearly due to historical factors. In respect of Unemployment Benefit, there again seems no reason why the self-employed should not receive such benefit, though it is admitted that administratively it is very difficult to ascertain in what circumstances benefit should be paid. In connection with this difficulty the problems of the rate of payment and of payment to the New Entrant loom near the surface, but must be elsewhere considered.

We must conclude, therefore, that the ILO's acceptance

of separate definitions of coverage for each contingency is based on no firm principle and is much to be regretted.

Bound up with the problem of coverage, as also with that of definition of contingencies, is the consideration of Qualifying Conditions to which we must next turn.

Chapter 5.

Qualifying Conditions.

It must be borne in mind, when considering qualifying conditions, that the latter are, in reality, part of the definition of each contingency and are only separated therefrom for reasons of administrative convenience. Thus, in framing an international convention, whereas the definition of the contingency must be strictly made, a greater latitude as to qualifying conditions may be permitted to ratifying countries. In the present discussion it is convenient to follow this distinction.

Qualifying conditions are of particular inportance for schemes which have not yet achieved universality in coverage, since there is always a great temptation for those not included in the scheme to obtain payment of benefits by fraud. Further, even in a scheme which has achieved universality the device of different levels of benefit on satisfying different conditions is often used.

501. International Practice.

Bearing both objects in mind, we must consider the international practice which has developed in connection with qualifying conditions. Thus we may notice that under schemes that cover the whole population, the sole question at issue will probably be whether the claimant is a recent immigrant or not. Under family benefits schemes which cover the whole population or all persons gainfully occupied or accepting the responsibility of looking after a child, sufficient qualifications are usually the gainful

occupation of the parents or their residence and the ordinary residence of the child. In the UK, however, 26 weeks of recent residence are required by citizens. Eire requires two years of residence for non-nationals. On the other hand the countries providing benefit only to employees usually require no more proof than of this latter fact. Czechoslovakia has a qualifying period of 45 days insurance in the quarter or 90 days in the six months preceding the claim.

It will be recollected that the two pre-war conventions adopted in 1933 allow the pension to be conditional on the completion of a qualifying period, which should not exceed approximately 5 years. Also under these conventions, where the scheme is non-contributory the pension may be made dependent on a period of residence of the deceased, which period could not exceed 5 years.

The Income Security Recommendation of the Philadelphia Conference[64] laid down certain qualifying conditions which are of interest to the present discussion. With the exception of benefits paid on the occasion of employment injury, conditions might be imposed if they were designed to prove that the normal status of the claimant is that of an employed of self-employed person and to maintain reasonable regularity in the payment of contributions, with the proviso that a person was not to be prejudiced by the failure of his employer to collect the due contributions. In the case of sickness maternity and unemployment, this condition might take the form of a

requirement that contributions had been paid in at least a quarter of a prescribed period, such as two years before the occurrence of the contingency. In the case of maternity, the recommendation provided that a contribution period of 10 months before the expected date of confinement might be required, though if these conditions were not fulfilled a minimum rate benefit should be paid during the period of compulsory abstention from work after confinement if the claimant's normal status appeared to be that of an employed person. In the case of invalidity, old age and survivors benefit, the requirement might be that contributions had been paid for 2/5ths of a prescribed period, such as five years, though payment of contributions in respect of 3/4 or a prescribed period, such as 10 years or such longer period which had elapsed since entry into insurance should be recognised as an alternative. For old age pensions, there might be a further condition that the first contribution payment had been made at least five years before the claim. The right to benefit could be suspended where the claimant had failed to pay contributions in respect of self-employment or any penalty imposed for late payment. Further the Recommendation required that the insured status should be maintained during payment of benefit to ensure that in the event of recovery from the contingency continued protection should be ensured.

It is necessary to bear in mind that the whole question of qualifying conditions is only of particular

importance during the early stages of a general scheme or during the operation of a partial scheme, but becomes much less important as the scheme matures or becomes more general. It is probable that even where they are retained as a proof of gainful occupation, they will soon be fulfilled by the vast majority of persons so occupied. Where an old age scheme protects the whole population irrespective of gainful activity, the condition of residence is likely to be fulfilled by the vast majority of claimants. Allowing for exceptions for temporary absence and for migration, the ILO, having reviewed the previous practice, felt that 20 years was a reasonable length for the qualifying period. In the case of family benefit schemes, countries of immigration may find that a minimum period of residence may have to be prescribed, particularly during the first years of operation.

So far very few countries have been able to approach universal scope for some or all of their benefits. The means test, the area scheme, the urban employment technique are used in many schemes to restrict scope. In addition, the waiting period and the period of maximum duration are also used to restrict scope. The qualifying period has the particular merit of allowing a gradual broadening of the scope of the scheme. It is noticeable that medical and sickness cash benefits are now often granted without a qualifying condition, though meternity cash benefit and unemployment benefit have not reached this stage of development in the world generally. In the case of long

term benefits the length of the qualifying period seems to be based on the restricted aim of the scheme, the proportion of the pension depending on the length of the contribution period, the liberality of the conditions for the maintenance of acquired rights, and the length of the period over which the benefit is to be paid.

The problem which faced the ILO was to devise a minimum standard which would dovetail in with all these varied systems. In the result the suggestions made were as follows: for a national health service, ordinary residence; for employment injury, employment at the relevant time; for medical benefits provided under sickness or maternity schemes granting both medical and cash benefits, there should be no minimum qualifying period, though a temporary standard allowing a period of one month of contribution or employment within a prescribed period would be allowed; for sickness cash benefit, a period of 6 months in the 12 months preceding the claim, though where a scheme covers all members of the community subject to a means test a period of 12 months residence may be applied instead; for unemployment benefit, two alternatives are suggested - either 6 months out of the preceding 12, or 12 of the preceding 24 - again allowing 12 months of residence where the whole population subject to a means test has been covered; with regard to long term benefits, for invalidity, 5 years of employment or contributions or 10 years of residence; for survivors benefits, five years under both tests; (these periods may be required to have taken place

during a recent period); for old age pensions, either 30 years of contributions or employment, or 20 years of residence preceding the claim; for general family benefits in cash, a period of three months of contributions or employment or of six months of residence

502. National reactions to the ILO's proposals.

These views were circularised to member governments of the ILO in the form of a questionnaire: in their replies, approximately half of the governments were in favour of the formulae suggested. Many suggestions were made for amendment, it being felt that more specific terms should be imposed as to continuity or recency of employment or residence, or that the term "ordinary residence" was particularly open to abuse. For this reason it was argued that a period of contributions should be the sole condition allowed, though it was conceded that in the case of a general medical care service and for family benefits in kind (and also to prove the status of employees for employment injury benefits) ordinary residence should be sufficient. On the other hand it was argued by Ecuador that a period of employment was the most suitable criterion. The Swiss government argued in favour of allowing reduced benefits to be paid in the case of long term benefits where the full period for the standard benefit had not been covered. The Government of the United States thought that periods of employment or contribution should be measured by reference to earnings over a given period and would wish for a recency test for long term benefits. Further arguments

defended the principle that citizenship should be admitted as a condition of right to benefit under non-contributory schemes, or would require a period of residence in the case of foreigners but not in that of citizens. The main arguments on this latter point have been considered earlier in this discussion.

It was also argued that the adoption of the wording of the Income Security Recommendation 1944 would be more satisfactory, particularly for long term benefits, since the formula was there set as "contributions in at least two fifths of the prescribed period". Turkey pointed out that among the under-developed countries the condition of a period of residence would not be entirely suitable, since in such countries the scope of protection is necessarily limited.

The French government thought that qualifying conditions under social security were very different from those which should be applied to commercial insurance. In particular, two types of criteria should be applied; in the first place, it was permissible to attempt to prevent persons who would not normally be entitled to benefits from claiming benefits by enrolling themselves through more or less fraudulent means in the classes of beneficiary concerned; secondly, the idea was acceptable that some benefits are granted as a counterpart of the beneficiary's contribution to the national economy. As has been previously suggested the first consideration applies in the case of schemes which have limited scope, and clearly does not apply to a scheme

which has universal application: the second consideration applies chiefly to old age pensions and to a lesser extent to unemployment allowances.

This question as a whole was considered by the Conference Committee of the 34th session. The Committee took into account the fact that for short term allowances and medical benefits the main purpose of the qualifying period is to ensure that the benefits are in fact received by the categories of person for whom they are intended; consequently the length of the period required will depend on the scope of the particular scheme, becoming less important as the scheme is broadened in scope. The logic behind this is, of course, the attempt to preclude enrolment for fraudulent purposes and to protect the financial interests of the general body of contributors. The details of such periods were dependent on the methods of the schemes in question, and the Committee felt that it was not possible to lay down more detailed rules. In the case of employment injury, the very nature of the contingency makes the special safeguard unnecessary, since proof of the employment and of the accident alone is necessary. For the long term benefits, maximum period could usefully be prescribed in the convention, and should be based on the conditions most frequently required in national legislation. An amendment was moved and adopted by the Committee that there should be an express stipulation that old age pensions at rates below those prescribed in the Convention should be paid to persons protected who have completed one half of the period of contribution, residence or employment and further that such

reduced benefits should be paid to persons too old when the scheme came into force to observe the qualifying conditions.

A further important point to be noticed is that the Committee decided that a member who ratifies on the strength of a scheme based on contributions will not be obliged by the convention to provide benefits for persons who fulfil only the alternative condition as to residence. This must be borne in mind during discussion of the objective meaning of the wording embodied in the convention.

During the discussions, the Employees members were opposed to the admission of the condition of residence provided for in the convention for schemes protecting residents subject to a means test. This of course was a by-product of their frequently expressed argument that the scope of the convention should be restricted to employees and was extended to its logical conclusion that the convention should refer to wages and salaries, rather than earnings. This argument was also extended to the apparent illogicality of the dual provisions for 20 years residence, and yet 30 years contributions.

At the same time as the consideration of general principles took place in the discussions of the ILO, the individual contingencies were also considered in more detail from the point of view of qualifying conditions. Thus:-

503. Analysis by contingencies.

A) Medical Care.

Schemes providing medical care for the whole population,

or the gainfully occupied, as in Chile, New Zealand, and the UK, or planned to provide such care but not yet in full operation, have usually no other qualification than ordinary residence, though the UK goes farther than this in providing free care to transients. We may note that the reason for the absence of such conditions in slightly developed countries also differs from that in advanced countries: the former are based on the fact that the imposition, for example, of a means test in an under-developed country would remove the right to benefit from so few persons (having in mind the general poverty) that it would not be worth the cost to administer a further test of residence.

When this opinion was further considered by the members of ILO, 14 countries approved the "no qualifications" formula, though New Zealand felt that the temporary exception should be restricted to cases where the whole population was not covered. This, however, appears to have been the original intention of the formula, since we have noted the discussion on persons protected that the only condition permitted under the original proposals was that of residence. One quarter of the governments replying thought that a period for qualification was necessary in every case to prevent abuse, and proposed longer periods in the case of both sickness and maternity.

In view of the difficulties likely over agreement here, it was decided not to specify the qualifying period, but to state that the right to these benefits might be made conditional on a period of contributions, or employment.

or residence, which may be considered necessary to prevent abuse, having regard to the scope of protection afforded by the scheme in question. The discussion also envisaged the possibility that a longer qualifying period might be necessary in the case of a voluntary scheme, than under a compulsory scheme.

In the final debate, Poland attacked the provision of a qualifying period, but no amendment was accepted, since figures tended to show that such a period might be necessary in the initial stages of a scheme, in view of the limited scope of protection. A.11 of the Convention represents these views.

B) Short Term Benefits.

Short term benefits may conveniently be considered together. Under this head may be included Sickness, Maternity, and Unemployment. In the same way as for medical care (for which in the case of morbid conditions likely to be cured by medical care or of doubtful issue a qualifying period is rare) most countries do not require such a period for cash benefit either. This group includes many of the South American and European schemes, though some of the latter impose a short period; Belgium requires three months or six months (if over 25) employment, Denmark requires six weeks membership, while Bulgaria varies the benefit period with the contribution period. Columbia and Peru require 4 to 5 weeks contributions, though Panama requires 39 weeks in the previous year. This seems to show that there is no division as to the imposition of conditions

of the right to benefit between advanced and slightly developed countries. The pre-war conventions adopted in 1927 do not admit of a qualifying period.[65]

In the case of cash benefit, the variation between the conditions imposed by different schemes is considerable. The length varies from 60 hours or ten days of employment in France to 52 contribution weeks in Brazil. The most usual qualifying period is 26 weeks, though in some countries more stringent conditions are required for full benefit. For example, in the UK, a payment or credit of 50 weeks contributions in the last year plus an actual payment of 156 contributions is essential for indefinite benefit. In Australia and New Zealand 12 months ordinary residence is required. It has been noted that the importance of these conditions varies according to whether the schemes under which they apply cover all gainfully occupied persons, or a limited section of the population, such as employees and independent workers, or merely employees, or merely persons of limited earnings. Generally, the larger the scheme, the greater the probability of the person protected retaining his title to sickness benefit, particularly since periods of sickness, or unemployment, are generally credited. The relevant pre-war conventions permit of a qualifying period for each benefit, but do not specify the length of such a period.

In the case of maternity, whereas there is no condition required for obstetric care a condition is often imposed where cash benefit is paid to ensure that the mother was in

fact employed. This often takes the form of a requirement that the mother has been insured for a period of ten months previously or has paid a certain number of contributions during that period. In quite a few schemes, however, no qualifying requirement is made, though the majority make a requirement. Here again this requirement becomes of less importance as the scheme becomes wider in scope.

Unemployment schemes are generally confined to those previously employed, though in Australia and New Zealand any person capable of and willing to perform suitable work is covered. Yet even in the latter case, the not-previously-employed have to prove that they are genuinely seeking employment. In this case some qualifying period is almost universal, Belgium and Czechoslovakia being the only countries requiring no such condition. In other schemes, the length of the qualifying period varies from 26 to 52 weeks of work or contributions in other West European countries. Often the qualifying period must be itself completed within a further prescribed period. The relevant pre-war convention adopted in 1934 admits a qualifying period without specifying its maximum duration.[66]

When the members of the ILO considered these preliminary observations less agreement was apparent in respect of short term contingencies than for Medical Care or Long term contingencies. Some countries thought the suggested standard suitable for one or two of the contingencies covered in this section, but the majority

wished to make certain amendments. In the case of sickness allowance, most countries thought that 6 months of employment in the twelve months preceding the claim or twelve months of residence was too short but there was little agreement on any particular figure. In the case of unemployment allowance, less than a half of the replies were in the affirmative, suggestions being made for increasing and decreasing the qualifying period or for including no detailed provisions at all in the general international regulations on social security. In particular the United States felt that the test proposed should allow benefit to be paid for workers who have been out of the labour force for twelve months. In the further case of maternity allowance, opinions expressed were equally diverse, even though the suggested restrictions were "a prescribed period of contributions of employment or of residence during the nine months preceding the claim". New Zealand, though not wishing that maternity be included as a branch of social security, felt that if it was included, the only condition should be that of residence at the presumed date of conception. Sweden felt that the only permitted condition should be that of a means test, though of course the maternity allowance is only paid to replace lost earnings.

Since such likely disagreement was foreseeable over the terms of any draft convention, it was proposed to state no more than the principle that the qualifying period for sickness maternity and unemployment allowances should

not exceed a limit which may be deemed necessary to prevent abuse.

In the final Convention, these views were incorporated as A.17(Sickness), A.23(Unemployment), and A.49(Maternity). In the latter case, both Poland and Yugoslavia opposed the inclusion of a qualifying period during the final debate, but the Office felt it unavoidable if abuse was to be prevented. It was observed that this provision was found even in the most advanced systems.

C) Long Term Benefits

1) Old Age.

One problem of qualifying conditions is a particularly important factor as regards old-age pensions. Clearly the age at which pensions become payable is very closely connected to the expectation of life, to the proportion of the population among the aged and the necessity for pursuading the elderly to continue at work. It would seem just to grant such pensions to any person who has resided in the country for a period covering a reasonable span of working life. These, in fact, are the conditions required by many of the countries which grant universal old age pensions, if not to residents at least to citizens. In Sweden, for example, there is no qualifying period, but beneficiaries must be both citizens who are resident or Scandinavians who have resided for at least five years. In Iceland the claimant must be a citizen and a resident. In Finland, residence only is required,

though the amount of the pension depends on the number of contributions paid. The New Zealand scheme grants a pension at age 65 without a means test after 20 years of residence, a means test having been applied to a similar pension paid at 60. The Swiss scheme covers the whole resident population as well as citizens living abroad, and requires only one years actual contribution, though the full scheme does not come into effect for 20 years. In the UK the pension is conditional upon retirement and on payment of 156 weekly contributions actually paid and an average of 50 per year paid or credited. Retirement is no longer a condition after 5 years at the age of 70 (65 for a woman) and the pension is increased in respect of gainful work accomplished between the ages of 65 and 70 (60 and 65). Australia grants pensions after 20 years of residence subject to a means test. Canada also requires 20 years residence as a general rule.

Countries with a lesser coverage have an equally wide range of conditions. The one discernable factor seems to be that the smaller the part of the pension based on contributions or length of employment or both the longer the qualifying period. In France, pensions for non-agricultural workers are paid at a rate of 20% of previous earnings at age 60 after 30 years of insurance, rising by 4% for each year between 60 and 65 that the claimant has continued in employment, though this rate is also paid at 60 where the claimant has been employed for 20 years on arduous work. Bulgaria also gives earlier pensions for more

strenuous occupations and cuts down entry restrictions for these special pensions from the normal 25 years contributions. Other schemes have conditions requiring from 20 to 30 years insurance.

On the other hand where the pension depends wholly or mostly on the length of insurance or employment, the minimum qualifying period is shorter. Thus it is 5 years in Brazil, ten in Cuba and similar period in other Latin American countries, though it rises in other such countries to 15 and 20 years. Yet in these slightly developed countries a pension sufficient for subsistence cannot as a rule be given without a working life of approximately 30 years. The 1933 Convention laid down no set period though a period of residence not exceeding 10 years was allowed.[67]

When these opinions were circulated to the members of ILO, half the replying governments accepted the proposals, the majority wishing for a shorter period. The Office pointed out in its commentary that the qualifying periods proposed related to the full benefits as prescribed for the minimum standard and further that there was nothing in the formula suggested to prevent members from complying with the minimum standard in respect of old age pensions to pay reduced pensions after a shorter qualifying period or at a lower age than that proposed for the draft convention. Poland suggested a shorter qualifying period for employees than for others. Denmark wished citizenship to be taken into account as a factor and Sweden wished for a longer

residence period for non-nationals. The original formula was retained after consideration of all these arguments, though one significant change was made, in that the words "preceding the date of the claim" were replaced by "preceding the contingency". This change was made because it was thought that differences of opinion might arise as to the date on which the claim arose, further to obviate the difficulty that "date of the claim" might have been interpreted as referring to the date on which the person protected claimed the benefit, rather than the date on which the title arose.

This question was the subject of great interest in the final discussions. In the draft convention, Paragraph (1) of A.29 allows qualifying periods of (i) 30 years of contribution (ii) 30 years of employment (iii) 20 years of residence if these have been completed within a prescribed period preceding the contingency: it also allows a condition that the claimant while of working age has paid a prescribed yearly average number of contributions. Under Clause (2), where benefits are conditional upon a minimum period of contribution or employment, a reduced benefit is to be secured to a person who has completed 15 years contribution or employment within a prescribed period preceding the contingency, or if half the yearly average number of contributions under clause (1)(b) have been paid while of working age. Clause (3) requires in the case of the minimum contribution or employment conditions reduced benefit to be paid to a person who by reason of his advanced

age when the applicable conditions came into force has not satisfied the conditions of A.29(1)(a) or (b) unless the benefit specified in A.28 is secured to such person at a higher age than that specified in Article 27. A.30 provided that the benefit specified in A.28 shall be granted throughout the contingency.

Ceylon wished ratification to be possible on the basis of a provident scheme with benefits based on the accumulation of contributions, but no other government supported that view. Germany raised certain problems as to the contribution periods to be taken into account for the calculation of the minimum qualifying period of not more than 15 years. Should contribution period prior to the date of ratification be taken into account? May periods which under national laws do not count towards the maintenance of acquired rights be ignored for the purposes of the international regulations? Under A.68 it is provided that the convention does not apply to contingencies which occur before the coming into force of the convention for the member concerned, and that benefits partly acquired in virtue of periods of contribution preceding that date, possibly under laws not in conformity with the convention, need not comply with the proposed Convention, except for the part of the benefit based on contributions paid after such date. The second point is covered by the provision that the person protected, in order to be entitled to the normal or the reduced pension may be required to have completed the minimum period of contribution within a

period prescribed by or in virtue of national laws or regulations preceding the contingency. Thus the prescribed period could be set by the national legislation at the total period since first entry into insurance, or, where a long interruption has taken place, to the last re-entry.

The UK pointed out a further difficulty which arises out of A.29(1)(b): where the criterion of a prescribed yearly average number of contributions is accepted, it seems to be necessary for good administration to require also a minimum number actually paid (156 weekly contributions in the case of the UK) and that provision for this should be made in the Article. The Office replied that this argument might have been more valid had the draft convention stipulated that the prescribed yearly average must include contributions credited during sickness unemployment and so on, but that the text as it stood did not prevent the imposition of the minimum actual payment. This condition would only be tolerable under an old age scheme protecting all economically active persons, since only in that case are the great majority of residents or their breadwinners contributing during their whole span of working life. Under a limited scheme, such a condition might well be prohibitive; particularly so where such limited scope is in a slightly developed country where employment is irregular and of short duration, and where the social structure was so little developed that it was difficult to keep touch with the many movements of inhabitants. In view of these considerations the suggestion was put forward to admit a

yearly average condition only where in principle all economically active persons are protected. In this case, normal pensions would have been paid only after the scheme had been in force for a period corresponding to that between the age at which liability to insurance begins and pensionable age so that the question of a minimum qualifying period would not arise.

The Chilean government also wished to reduce the minimum qualifying period for a reduced pension from 15 to 10 years and Poland to 5 years with the regular pension reduced to 25 years. Belgium wished to insert the requirement that the transitional pension be at least 1/2 of the regular pension. The relevant figures, however, show that even advanced nations do not reach these standards. France pointed out that the 34th session had adopted a clause requiring a reduced pension to be paid after 10 years though this idea had for some reason been dropped. However the duration of residence is calculated not only on the basis of periods following the introduction of old age pensions, or the setting up of an equivalent public service, but also on the basis of periods of residence preceding the introduction of such schemes. The figures further show that reduced pensions are never provided for under social assistance or a public service. It would seem therefore that to require a reduced pension in such cases would automatically exclude ratification on this basis, however high pensions might be.

On the question of transitional pensions, Holland drew

attention to the fact that reference should be made to inability to satisfy the conditions prescribed for the reduced rather than for the normal pension and this amendment was accepted. Austria suggested that periods of employment before the scheme should also be taken into account in the case of persons who could not satisfy the requirements on account of advanced age, though there seems no provision in the draft to prevent these considerations being taken into account. Germany asked for clarification that the age referred to in A.29(3) is the normal pensionable age prescribed by national laws and not necessarily the age of 65. France argued in favour of a clearer distinction between payment of a reduced pension without contributions and a reduction in the qualifying period for aged persons, but the Office felt that this would lead to the addition of more complicated provisions to an already complicated article, particularly in view of the many different solutions adopted by the member states. At the suggestion of the French government the meaning of the passage concerning payment of the normal pension at a higher age was clarified by a rephrasing of the text. Argentina and Belgium raised the question of combined periods of contribution and employment or contribution and residence; the point has been dealt with in the discussions of general principles.

The Committee on Social Security of the 1952 Session returned to the problem of the relationship between Qualifying Conditions and rates of benefit. An amendment

sponsored by Government delegates which was accepted allowed an exception by which the Convention might be ratified on the basis of a pension 10 points lower than standard on condition that it was granted to all persons completing a qualifying period of 10 years contributions or employment or 5 years residence. This means that a 30% rate would be accepted in place of 40%. Between these two periods, the rate should vary in proportion: where benefit was paid after a qualifying period of more than 15 years a reduced pension must be payable to persons who have satisfied a lesser period, though the amount might be determined by national legislation.

2) Invalidity

In the case of invalidity benefits, there is a univeraal practice not to require a qualifying period if the condition is due to employment injury because the connection is proved by the happening of the very accident. Where the invalidity is due to other factors, there is clearly more room for abuse. Three northern European countries with national invalidity schemes, Finland, Iceland and Sweden, of which the last two cover resident citizens and the first all residents, have no qualifying period for the basic pension. Supplements to these pensions, however, are subject to a means test. In schemes where the range of persons protected is more limited, the amount of the pension usually depends on the number of contributions paid or credited, or the length of the insurance period, though usually a fixed basic sum is paid after completion of a minimum qualifying period. The length of this minimum period varies greatly.

It is often short where invalidity is treated as a continuation of sickness as in Belgium and France, and longer where the assimilation is to old age, as in Bulgaria, Czechoslovakia and Netherlands, for example. The latter group of schemes have periods varying from 3 to 7 years, with a variety of provisions for the maintenance of rights and rights in the course of acquisition. Thus in Czechoslovakia the claimant must have had four years of contributions paid or credited in the five years preceding the onset of invalidity. The average length of the period seems to be approximately 5 years. It is interesting to note that the length of the period depends in Bulgaria on the age of the claimant at the time of onset of the invalidity. Generally speaking the period varies with range of persons protected, the portion of the pension which does not represent contributions or duration of employment, and the period during which acquired rights or those in the course of acquisition are maintained.

The suggested period would therefore not be more than 15 years of contributions or employment or ten years of residence within a prescribed period before the date of the claim. In this case, 2/3rds of the governments were in favour of the suggested formula, though other proposals made suggested a recency test, or propose that a distinction be made between nationals and non-nationals, the latter having been discussed elsewhere. There is an interesting difference of approach to be found among the replies of the different governments: by some, invalidity is regarded as akin to old age, the latter being defined as the age at

which incapacity becomes more or less general, while others regard it as prolonged sickness. There is room, however, in the suggested text for both conceptions, the period of reference being left to be decided by national legislation, so that it may precede the date of first diagnosis of the illness if desired. The French government thought that the modern tendency was to equate invalidity with sickness and therefore thought a shorter period more suitable which should precede the first diagnosis. The United States wished for a double test of long term and recent attachment to the labour force, though this was not covered by the standard suggested.

When the question came to the final discussions Belgium and France, which treat invalidity as a sequel to sickness, again objected to the proposed qualifying periods. A difficulty arose here, since it was feared that benefit might have to be paid after the qualifying period elapsed even though the supposed beneficiaries had left the scheme. Chile and Poland both wished to reduce these periods. Statistics show that pensions, where dependent on the length of the contribution period, seldom exceed 40% of standard wages even after 15 years contributions. Nevertheless, an alternative formula was suggested for schemes which cover the whole economically active population, so that the normal pension need not be paid until the claimant has three years of contribution and he then may be required to have contributed regularly during his working life. A further amendment allowed the invalidity

pension to give way to old age pension when the appropriate age for the latter is reached.

The 1952 Committee on Social Security considered a proposal to allow a longer period where the contingency had commenced outside the jurisdiction; but it was pointed out that under the existing text a number could require the qualifying period to precede the contingency. At the same time a sliding scale, similar to that suggested for old age, was adopted.

3) Death of the breadwinner

In respect of the contingency of death of the breadwinner, the qualifying conditions differ widely according to whether the presumption of need is more or less liberally interpreted. Where the contingency arises from employment injury, there are generally no conditions imposed. Otherwise the same reasoning applies in the case of invalidity or old age pensions and conditions are often the same for all these pensions, except that schemes which require a childless widow to be invalid or aged may have shorter qualifying periods. This is the case in the Netherlands, where in the latter case the period is reduced from 150 to 40 weeks. Where the contingency is covered by social assistance, as in Australia, New Zealand and Sweden, residence is always a qualifying condition. In Australia the claimant must be a citizen and have resided for five years, otherwise only a temporary allowance subject to the means test is paid. The figure in New Zealand is 3 years. In Sweden the

dependents receive pensions in their own right as residents, but the widow must be a citizen with a child under 10 or be 55 years of age.

In their replies to these views, 15 of the governments felt the suggested standard was suitable. The general feeling of those governments not accepting this standard was to reduce the length of the period. The French government preferred either the suggested standard or that admitted for invalidity pensions, but points out that there should be no qualifying period where the deceased was an old age or invalidity pensioner. The government of Ceylon preferred a provident scheme, whereby the amounts accruing to a beneficiary would be dependent on the number of contribution years. Sweden wished that conditions as to age of the widow and the duration of her marriage should be applied with supplements in respect of children, to be dependent on the age of the children. The formula originally suggested was retained with slight amendments, so that benefit would be paid to a widow or children whose breadwinner had completed 5 years contributions or employment within a prescribed time before death or to a widow who had resided for 5 years during a prescribed period preceding the breadwinners death and to a child having lost one or both parents providing that the parents had been in residence for that period.

When the question came to a final discussion the comments of the member governments followed the pattern set under the old age and invalidity headings. Belgium

wished the reduced pension to be 1/2 of the normal pension. The UK wished to introduce a prescribed yearly average of contributions plus a minimum number actually paid, in the same way as for old age. Death, however, differs from old age in that it is not predictable so that the qualifying period for death must be shorter than for old age.

An alternative formula was therefore introduced so that where all economically active persons are protected, the normal pension may be reserved to survivors of a breadwinner with a minimum of 3 contribution years plus a prescribed yearly average. A reduced pension must be paid if half the average plus 3 full years had been attained. The qualifying period under the original formula was not reduced since statistics showed that such pensions do not normally exceed 30% of standard or individual wages under existing schemes.

The 1952 Committee on Social Security also applied the exception of a 10% lower rate where a five year was required: in the case, however, of a scheme covering all the economically active the Employees delegates proposed to leave the qualifying period to national legislation, but this was not accepted.

D) Other contingencies

In the two remaining cases, the question of qualifying conditions plays a much less important part and may be quickly dismissed. Thus:-

1) In the case of employment injury, there is generally no requirement of a covering period, since it is deemed

sufficient that the claimant was employed at the time of the injury. Where the injury is caused by an occupational disease, sometimes a minimum period of exposure to the disease is prescribed. Accordingly no such period is allowed in the Convention.

2) In the case of family allowances, a comparatively short period is usually allowed in order to show that the breadwinner is a regular member of the class of gainfully occupied persons or of persons normally residing in the country. The original suggestion put forward was for three months of contributions or six months of residence preceding the date of the claim. Again approximately half the governments were in agreement with the proposed formula. Of the others, generally speaking the countries of immigration considered the period too short: on the other hand Poland and France preferred a shorter period. It was therefore decided that a compromise solution should be attempted, whereby the three months of employment or contributions or employment should be retained, but the period of residence should become 12 months, so that countries of immigration might take advantage of the proviso allowing residence conditions to be more stringent for foreigners than for aliens. It is to be noticed that no distinction was made between benefits in cash and in kind, since these were to be administered under the same branch. These provisions were incorporated in A.42 of the Convention.

504. Advanced standard.

We may finally turn to consider the advanced standard for qualifying conditions. In this respect, since the scope of the branch ratified would, as we have discussed previously, be universal, it was decided that the necessary conditions for benefit would be:- under a national health service and a general family benefit, ordinary residence; for employment injury insurance, the status of employee; for other benefits except old age pensions, the status of a person ordinarily engaged in gainful occupation; and for old age pensions, regular gainful work while of working age, or where all residents are protected, 20 years of residence.

When these views were considered by the member governments of the ILO the majority disagreed with one or other of the qualifying conditions suggested, though the only discernible general trend seems to have been towards the insertion of more definite tests and towards the admission of contribution conditions. Many observations were made under this heading which more properly refer to the scope of protection. For example, it was suggested that persons working on their own account should not be protected in short-term illness. The Office, however, felt that under an advanced standard with universal scope to be applied by fully-developed schemes, ordinary engagement in gainful work of necessity implies regular contributions if the scheme is contributory and qualifying conditions intended to ensure such regular payment of contributions

will not be excluded by the formulae suggested for the branches covering medical benefits in case of sickness or maternity and invalidity and survivors pensions. It is also important to read qualifying conditions closely with the definition of the contingencies covered; an example of this is that suspension of earnings is a condition of title to sickness allowance and persons working on their own account will have no such title as long as their business can be carried on by their family associates or employees.

The United States felt that the advanced standard was too vague to be expressed by a Convention, if not by a Recommendation and that it was only when the limits of the tests to be applied are closely defined that the relationship between the minimum and the advanced standard becomes clear. The French Government thought that, where there was no other means to prevent fraudulent enrolment in the classes entitled to benefit, even under the advanced standard qualifying conditions should be permitted. The Austrian Government, while feeling that the proposed conditions were of too general a nature, wished to insert a provision into both standards that a normal benefit should not be refused to a person who does not belong to the category for whom the benefit is intended, but had the bona fide belief that he belonged to that category because he was treated as a person protected by the authorities. Poland, supported by Yugoslavia, surprisingly argued that the levels in this respect set by the minimum standard were sufficient to guarantee adequate protection. The United Kingdom felt it important that the advanced standard as well

as the minimum standard should be satisfied by schemes based on the contributory principle as well as schemes of a social assistance character. Therefore membership of the class for which sickness, maternity or unemployment allowances, or invalidity survivors or old age pensions, are intended should be provable either by the status of the person or by his residence in the country or by his record of contributions paid or credited, as might be appropriate. The Danish government, for each of these contingencies except old age, would add an alternative condition to the effect that all residents should be protected, except those who have not paid direct contributions towards the benefit in question and whose financial circumstances are such that they do not need help.

As a result of these considerations, the proposed conditions were retained with the exception that in respect of employment injury and unemployment benefits the qualifying conditions were suggested as employment at the time of the injury or the contracting of the disease or ordinary engagement in an employed person respectively. No means test is allowed, though this provision is not contrary to the provision of assistance to those persons who do not comply with the regulations for regular benefit.

Chapter 6.

Definition of Contingencies: General considerations.

In considering the definition of contingencies, two important distinctions must be made, namely A) between 1) Short Term or 2) Long Term Contingencies, and B) between 1) Contingencies decreasing income or 2) increasing expenditure.

601. A) 1) Short Term or 2) Long Term Contingencies.

As has been previously suggested, it seems proper to make a distinction between short term and long term benefits. It is a point of criticism of the 1952 Convention that this distinction has not been clearly made, as will become apparent when we consider the discussions which took place.

At this point also, it is necessary to refer to a second difficult problem which will be more fully analyzed elsewhere in this discussion - namely the problem of the principle on which benefit is to be paid. This is clearly related to the definition of the contingency, particularly to the question whether the contingency covers loss of earnings due to some eventuality or the eventuality in any event.

The distinction can be clearly seen if reference is again made to the principles which have been previously outlined. What is the underlying principle on which Social Security is based? It is the attempt to spread upon the broad back of the whole society the undeserved interruptions of the usual balance of income and expenditure. A whole

universe of difficulties lies in the definition of the words "undeserved" and "usual balance", some of which have been previously outlined. For the purposes of the consideration of Short Term benefits, it is clear that the suddenness with which Sickness or Unemployment may occur is in sharp contrast with the time necessary for a family to reduce its expenditure to balance a sudden reduction in its income. It seems best, therefore, that over a short period the benefit payable should aim to replace the income lost through the occurrence of the contingency. The latter should therefore be framed to include only loss of earnings due to the happening of the event and should make no special provision for dependents, since the original wage, which is being replaced by the benefit, did not do so. By contrast, Long Term Benefits do allow the family to adjust its expenditure in accordance with the loss of income imposed by the happening of the contingency and therefore the benefit should not attempt to replace lost income, but should seek to cover a minimum income which will cover the expenditure necessary to a simple standard of living. Such expenditure will necessarily vary according to the number of persons in the family affected by the happening of the contingency and each dependent should therefore receive a benefit in his own right.

The Short Term benefits are three: a) Sickness, b) Maternity and c) Unemployment. These may be briefly put, so as to show their logical relationship, as follows: a) undeserved temporary interruption of the claimant's

income for biological reasons, b) a special case of a) requiring special consideration through the peculiar meaning which has to be given to "undeserved", c) undeserved interruption of income for sociological reasons.

This distinction between biological and sociological needs to be made owing to the heavy presumption in the case of biological contingencies (with the possible exception of maternity) that the interruption is undeserved. Where the interruption is sociological, very difficult problems arise as to the meaning of "undeserved".

Long Term Contingencies are usually three: a) Old Age b) Invalidity and c) Death of Breadwinner, though a fourth is suggested later in the discussion.[68] These may be briefly put, so as to show their logical relationship, as follows: undeserved permanent interruption of the income of the claimant or the claimant's breadwinner for biological reasons: this may, for administrative convenience, be grouped as a) a standard age at which most people find it difficult to earn a living, b) the special case of infirmity commencing at an earlier age than the standard age, c) the special case of death of the claimant's breadwinner. The latter is a special case because in cases a) and b) there is always a possibility of earning ability being regained.

602. B) 1) Contingencies decreasing income or 2) increasing expenditure.

This distinction divides the list of contingencies usually covered as follows:-

1) Those decreasing income

a) Sickness

b) Maternity

c) Unemployment

d) Invalidity

e) Death of Breadwinner

f) Old Age

g) Employment Injury

2) Those increasing expenditure

a) Need for Medical Care (whether owing to Sickness, Maternity, Invalidity or Employment Injury)

b) Family Allowances

The theoretical justification for coverage of contingencies decreasing income is perhaps easier to see than that for those increasing expenditure. The basis of the former has been set out above under A) with the exception of the contingency of Employment Injury. The latter is in an anomalous position, being a special case of Sickness Invalidity and Death of Breadwinner which is separated because historically it has been amenable to the onset of social security through its connection with employment, often the first group to be covered: in many advanced systems it is still regarded as a separate category because the connection between the work of the individual and the benefit of the community was so strong that more generous benefits and less onerous conditions were considered to be warranted. However, this attitude leads to confusion and there are some signs that many countries feel that it should no longer be considered as a separate contingency in the sense of an income-security contingency.[69]

The contingencies which increase expenditure are generally considered to be two in number: medical care and

family allowances. The justification for the payment of medical care lies clearly in the fact that little difficulty will be found in proving that the expenditure was "undeserved". The payment of allowances for the maintenance of children springs rather from a desire to ensure that each child is well fed and clothed and does not suffer from the inadequacy of a family's income.

It is clear that this heading of contingencies which increase expenditure will be the sphere in which great development of social security will in the future take place. Indeed, family allowances themselves are a recent development which is only established among the more developed systems. There is a further vestigial benefit provided in some countries - namely the provision of domestic help in certain cases. This, however, may be a form of benefit in kind rather than a separate contingency requiring extra expenditure. Forecasts of possible future contingencies to be brought under the web of social security would be very dangerous. The expense of education, of course, can really be regarded as a social security benefit, though it is usually provided only in kind, and it is usually financed out of general taxation and not by special contributions. We may venture to suggest that there is no other expenditure which is regularly increased which might be brought under this head (unless it be a wife allowance) since most other eventualities of an insurable nature are connected with the ownership of property. As has been suggested in the introductory

chapter the future development of social security lies in the shift from income security to capital security. Thus it is not regular categorisable items of undeserved expenditure that will be brought into coverage, but single items more of a capital than an income nature. Some signs of this are clear from the provision of free education and family allowances. It is known that in many families which do not have the advantage of such social services capital must be drawn on to provide education. It could thus be argued that these benefits border on a capital nature. It may be, however, that the persistence of Employment Injury as an insurable risk may also be a pointer in this direction.[69]

603. I. Short Term Contingencies. A) Sickness:

As we have outlined in introducing the question of the definition of Short Term contingencies, it seems logical that the contingency should cover the loss of income from sickness and should not make special provision for dependents. Two short points seem relevant here: in the first place, although the aim is to provide benefits to replace the income lost, administrative reasons compel a somewhat lower benefit so as to avoid abuse. One method of applying this is by exacting a waiting period of approximately 3 days before benefit commences. Although this is a feature of even the theoretically ideal system, it is so closely connected with the question of duration of benefit (which is appropriate only to temporary reductions) that we will consider it under that heading.

In the second place there seems no logical reason why the self-employed should not benefit along with the employed, provided that loss of income can be proved.

We may now turn to the wording of the draft convention. In common with the mechanism adopted in other parts of the convention, A.13 binds members ratifying the part dealing with sickness to provide benefit in respect of incapacity for work in accordance with the immediately following articles. Even this simple formula was criticised by the Belgian and Swiss governments on the grounds that incapacity for work does not make a clear distinction between sickness and invalidity, and the title of the branch was changed to "Sickness" from "Incapacity for work".

Article 15 of the draft defines the contingency as including incapacity for work resulting from a morbid condition. Federal Germany asked for an assurance that in this definition earnings only refers to income from work: the ILOffice gave this assurance, being of the opinion that this was the natural meaning of the English term.

B) Maternity.

Similar comments are applicable in the case of maternity as in the case of sickness and medical care. Clearly all cases of maternity must be considered to fall within the category of undeserved interruption of income. Under the draft convention, A.46 defines maternity to include pregnancy and confinement and its consequences and suspension

of earnings resulting therefrom. Benefit is to include a) qualified care by midwives and if necessary by medical practitioners and b) hospital nursing and maintenance where necessary, aimed at the restoration of health and the ability to work and to attend to personal needs.[71] The institutions concerned are to encourage women protected to avail themselves of the health services. In both these contingencies, Sickness and Maternity, the existence of the contingency in any particular case must depend upon the certification of the appropriate medical services, though Maternity can be standardized by allowing set periods on each side of the expected date of birth, complications being dealt with as Sickness. This certification procedure is open to abuse, but there seems to be no administrative method of checking it except by statistical controls on the number of certifications by one doctor as a percentage of his patients or on the average length of illness for a stated illness. Here, as so often, the efficiency and honesty of the administrating staff must be assumed. If this is not so, the difficulties into which the system would be plunged in respect of Sickness and Maternity can be seen by a consideration of the parallel difficulties encountered by Unemployment Coverage.

604.C) Unemployment.

The contingency of loss of income through unemployment creates special difficulties of definition, particularly since it is necessary to examine the distinction

between deserved unemployment (arising, for example, from misconduct) and undeserved unemployment which gives title to benefit. There has been widespread opposition to the introduction of the contingency on the grounds that the payment of benefit saps the willingness to work. It is important to consider this problem from the wider point of view of the sociologist rather than the narrower point of view of a lawyer, and to give it special attention. There are, in reality, two basic problems which underlie this question. First what should be the relationship between the income provided by social security and the income which would be secured by participation in economic life? Second to what extent should the community be responsible for items of economic support which were previously assumed by the family?

Social factors in defining "undeserved unemployment".

The fear disclosed by the first problem is, of course, the suspicion that the provision of social security benefits will sap the will to work and thereby cause a drop in national output. In normal times it appears that this factor is of slight importance, but when widespread and lengthy unemployment has occurred, it may be that the lack of a work habit may accentuate the tendencies inherent in a high rate of benefit. Social studies of recent years have shown the important social implications which prey upon the minds of the unemployed.[72] In times of full and continuous employment, however, an important link may exist between the employee and one particular employer, based on considerations

of seniority and private scheme pension rights. There are of course always marginal groups which fail to respond to the normal stimuli and social studies have shown that the greatest problem lies among married women, who are tempted to draw unemployment benefit while carrying out a housewife's responsibilities, and casual and irregular employees as, for example, dock workers.

Some sort of control mechanism is therefore necessary to prevent the increase of such practices. It appears from the social studies undertaken that the problem is increased if it is felt that the administration is lax.[72] This exposes the problem of devising a tight system which does not penalize those who are not misusing the system.

One of the earliest systems of control proposed was the famous principle of "less eligibility" enunciated by the English Poor Law Commissioners in 1834. This principle required that public assistance should never exceed the earnings of the lowest category of independent worker, and was intended to safeguard the system against abuse. Some of the thought behind this feeling is reflected in those systems which adopt some measure of control by setting benefits fairly low in relation to average earnings. The UK for example has set the rate at approximately 20%. The risk of this method of control is that it is very probable that many of these benefits will require supplementation by special assistance. In other countries, the flat rate pension is restricted to categories where

there is a presumption that the members are in fact in need of assistance, other actual cases of need being dealt with by the social assistance schemes. This problem arises to a lesser extent among systems which are based on previous earnings, since the benefit will always be a proportion of earnings, though it is possible that the only employment available may be at a lower wage than employment previously enjoyed. In this way during a severe drop of wages during a slump, the social security system may operate to keep labour off the market. A further economic factor to be considered is that it is usually intended that a social security system shall be a buttress against catastrophic drops in business activity by providing a constant flow which will not be affected by lack of business confidence. Where, however, the benefit is fixed at a low percentage of previous earnings in order not to discourage the will to work, this may prevent the scheme being effective as an anti-slump measure. It has been calculated that the failure to adjust maximum rates to the cost of living has meant that in the event of a heavy decline in industrial production unemployment benefits will make up no more than 25% at the most of the decline in purchasing power.[73] The problem of malingering is most difficult in those cases where the average earnings of the beneficiary are less than the minimum rate fixed by the scheme. For this reason the use of the technique of eligibility conditions rather than that of a minimum benefit seems to be preferable, but it does not seem to

have been widely used. It should also be noted that in fairness wages should be related to take home pay rather than theoretical wages. On the other hand, when the benefit is computed there are certain working costs which are not incurred when the claimant is not working, so that there should be a further margin between benefits and wages to take this factor into account.

605. Relation of qualifying conditions to the definition of "unemployment".

Further controls may be applied through the conditions attached to the receipt of benefit. An example of this was the attempt to make the receipt of benefit so unpleasant that it would be regarded as the last resort. This was the method adopted by the old poor law, and often involved deprivation of civic rights and adverse publicity. A further condition sometimes enacted would be that the claimant entered a workhouse or similar institution. The experience of the 1930s which made clear that unemployment is not necessarily the result of the default of the unemployed made this policy objectionable. In many respects the utilization of the means test which has many other disadvantages also operates as a deterrent, since in many cases the application of the test is most humiliating. Further than this, it is argued that the means test acts as a disincentive for saving, since the thrifty man will have accomplished nothing in comparison with his spendthrift neighbour who is drawing benefit. For this reason a certain amount of property is disregarded: for example a house in

which the beneficiary is resident may be kept, though often the security fund will claim a lien for repayment or a right to repayment from the beneficiary's estate after his death. In some countries, such as the UK, this allowance is defined by a long list of disregarded items. The logic of these exceptions is, of course, that capital possessions cannot readily be turned into cash.

Some systems, for the reasons summarised above, feel the best solution to this problem to be the restriction of the benefit to wage earners who earn more than a certain minimum. The defects of this system are obvious, since it prevents the payment of benefit to the persons most in need. A more common variation is the requirement that the beneficiary has been attached to the labour force at some time in the past; the latter is often ascertainment by proof of the requirement that a minimum income has been earned in the recent past. The effects of this are that it defines the group which constitutes the basis of the problem to be solved, and it does offer some guarantee that the claimant is not attempting to misuse the system. The difficulty here is that the setting of a minimum standard of previous income runs into the same difficulties from a changing cost of living as the other money standards which are discussed elsewhere. A further disadvantage lies in the fact that a worker laid off owing to seasonal unemployment in two consecutive years may not obtain benefit in the second year through not being able to meet the income requirements in the first year. Obviously the danger

of this happening is greater among the lower paid workers, a factor which again shifts the benefit from the area where the need is greatest. A further variation, practised by the UK system attempts to judge this problem in terms of periods of employment. This however brings problems, since records are necessary to ensure that this criterion is satisfied and clearly a week of work is less easy to measure numerically than a certain amount of income.

606. Relation of duration of benefit to the definition of "unemployment".

One further control, often suggested for advanced as well as interim systems is applied through the policy of limiting the duration of benefit payments. In the United States, this device is used particularly in unemployment insurance, and in many cases payment stops after 26 weeks in a benefit year. This device is felt to lessen the inducement to prefer benefit status to employment and further to lessen the risk which society runs that social security is being misused. But in this case, as well, the device cannot be too rigidly used; in periods of long term recession, after the cessation of the period during which benefit is paid, some other method must be used to provide income for the unemployed, and this device for limiting payment is clearly inappropriate for non-discretionary non-deterrent income security programmes dealing with long term risks, such as old age or permanent disability.

607. Reliance on Administrative techniques.

In addition it is often thought necessary to impose certain administrative controls on those claiming unemployment benefits. In the first place, there must be certain positive conditions which must be satisfied if the claim is to be valid. For example, the claimant must be able to work and available for work, a condition which is usually tested by periodical registration at an employment exchange, since this requirement proves difficult to fulfil for persons attempting to draw benefit and yet take work at the same time, and also enables the employment service to offer any jobs which come on hand. Secondly certain specified causes disqualify from benefit: for example, voluntary leaving suitable work, discharge for misconduct and refusal of suitable work, fraudulent misrepresentation, and, often, where unemployment is due to a labour dispute in the outcome of which he has an interest. The judgment of such matters requires the use of discretion which cannot or rather has not yet been defined with precision by the law. In the United States some attempt has been made to narrow the scope of discretion by defining suitable work to exclude jobs available only because of a strike lockout or other labour dispute, or where the wages hours or conditions or work are less favourable to the claimant than those prevailing for similar work in the locality or where a condition of work would be to join a company union or to resign from a trade union. Other criteria sometimes found are the claimant's

physical fitness for the work, his prior training and experience, his prior earnings, the length of his unemployment, the prospects of obtaining work at his highest skill, his prospects for obtaining local work and the distance from his residence of the available work. These phrases are admittedly vague, but it is clear that they assist in the narrowing of the scope of discretion.

608. Special position of Married Women.

Two further questions must be briefly touched on. One arises from the distinction we have drawn between long term and short term benefits. It will be recollected that in respect of the latter it has been argued that the benefit rate should be related to previous earnings and that no special provision should be made for dependents since the normal wage does not take dependents into account. What therefore is the position, it may be asked, of married women who work to supplement the family income? Where they fail to obtain employment, is it fair that they should receive a benefit while the married women who have never chosen to take employment, and yet who, during the unemployment, are in the same de facto situation as those who claim unemployment insurance?

The answer to this problem seems to be that where a comprehensive and adequate system of family allowances is being paid, and where unemployment benefit for the family's breadwinner, if he is unemployed, is a high percentage of previous wages, then it is wrong to pay unlimited benefit to the unemployed married woman but such benefit should

be limited to such time, perhaps three months, as will enable the family to balance expenditure with income. Clearly, however, this limitation of duration should not be allowed to operate where there is not an adequate family allowance or unemployment benefit.

609. Unemployability.

The second question is concerned with those cases of long term unemployment which arise where a claimant, through lack of intelligence, lack of physical abilities, or lack of skill, is virtually unemployable. In these cases (which must be contrasted with long term unemployment through trade depression, where it seems best that the short term benefit should be extended) some form of long term subsistence benefit needs to be provided. This problem arises particularly in the case of premature widowhood and will be considered under the heading "Long Term benefits - Unemployability".[68]

610. International practice on unemployment.

This survey clearly shows the difficulties which are inherent in the introduction of unemployment as a further contingency in a comprehensive social security scheme. The ILO, however, in its discussion, hardly touched on these difficulties, but left each country to devise its own interpretation of the general language used in the draft convention.. It is fair to say, however, that the refinements of definition previously suggested in this discussion are more vital to the protection of a scheme's finances rather than the fair protection of the individual.

The presumption, as it were, lies in the individual's favour.

In the draft convention, A.19 required the member ratifying to secure the provision of benefit in respect of unemployment in accordance with the immediately following Articles. Chile, however, wished to exclude this branch from the convention; it is interesting to note that the Office's reply to this was based mainly on its view of the social obligations of the community towards persons whose earnings are interrupted as a result of events over which they have no control. It is to be noted that A.2 no longer requires at least two parts of parts II to VII to be ratified, this alteration being made because the figures showed that the less developed countries do not as a rule cover unemployment and child maintenance but rather begin with the coverage of biological contingencies, which is the normal development of social security systems. This alteration thus seems to take into account the Chilean opinion. Finland wished this branch to take account of public works offering employment at normal wage rates, but these systems are not part of the immediate mechanism of social security, but are intended to relieve social security systems, since the payment of benefits can be avoided by creating employment.

The definition of employment under A.21 covered suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work. Yugoslavia wished it to be

specified that the qualifications and personal aptitude of the claimant should be taken into account: Argentina pointed out that the definition only deals with total unemployment. Austria felt that there should be a criterion that the claimant was willing to work. The Office, however, thought the definition sufficiently broad to cover both these points. It was not able to accede to the suggestion of the Yugoslav government that those seeking work for the first time be also included. Only two of the countries with social assistance schemes extend benefits to persons not normally employed.

611. II. Long Term Contingencies.

The three long term contingencies have been briefly defined previously as "undeserved permanent interruption of the income of the claimant or the claimant's bread-winner for biological reasons". We may first consider the administrative grouping of this contingency under the heading of old age.

D. Old Age: general considerations.

Two separate principles seem to underlie many of the existing social security plans which provide benefit for old age. The first, which we have suggested is the most appropriate basis, is based on the fact that inability to earn a sufficient income is a common experience among the aged and that benefit should be paid where this inability has been experienced. The second principle, which very often is found to be the layman's approach to the situation, is based upon a supposed natural right after serving the community for 40-50 years to relax and

enjoy the final years of one's life. There is clearly a strong moral force in support of the latter idea, but it is clear that, inasmuch as old age is to be considered as combatting a decrease of income, it is inappropriate to the consideration of social security at the present time. We may venture to suggest that it may be that some development may take place in respect of old age along the lines of combatting an increase of expenditure, but, at the highest, this can only be said to be a matter of future speculation.

The principle of compensating existing inability being thus seen to be the most appropriate, numerous questions as to its application arise immediately. It is obvious that the administrative difficulty of determining when each claimant has become incapable of work would be prohibitive. The device adopted, therefore, is to fix an age at which, in the particular society which the scheme covers, it is reasonable to assume that the average citizen is incapable of work. Persons incapable of work at an earlier age will be covered by Invalidity benefit. Persons still capable of work after attainment of that age present a more difficult problem, which is usually dealt with under the heading of "retirement". In finding a just solution to this problem, the two contrasting themes of pure theory and social necessity must be kept in mind.

612. Retirement.

From the theoretical point of view, the definition of "retirement" must be so pitched as to prevent the payment

of benefit to those persons who are capable of productive work and must yet accomplish this task with the minimum of administrative cost. The combination of devices best adopted to secure this aim makes continuance in employment as the test of ability to continue and sets the pension rate paid on retirement at a higher rate which increases sharply for each year of continued work after the set "retiring age" so that the inducement to stay in employment is strong enough to counteract the temptation to rely on the retirement pension. Of course the actuarial cost of the later pension allows this extra inducement to be given without destroying the financial balance of the scheme. Again this use of the technique of leaving the decision whether to retire to the individual does allow a place to the operation of the feeling that one has a natural right to retire on a pension.

613. Importance of Social considerations.

For this contingency, also, social considerations play an important part, since the vital factor in setting the terms of retirement may well be the needs of the labour market. Certainly in times of unemployment one must expect a prevalent fear that in the absence of a retirement test workers in receipt of benefit will compete unfairly for available work and tend to depress wages because they can afford to take jobs at less than prevailing rates. On the other hand it can be argued that such persons, since they have a measure of economic security, can afford to be more discriminating in their

choice of jobs. From a psychological point of view it seems to be becoming accepted that old people, if in reasonable health, lead more satisfying lives if they do not withdraw entirely from the labour market.

Social considerations in each community are of importance. It may be that employers are highly discriminating against the aged and it is likely that the public may be more disposed to minimize the loss due to induced early retirement. Of course it is desirable, as we have suggested, to set the pensionable age at the level adjudged to be the point at which unemployment becomes, for psychological or other reasons, a general characteristic of the group and to treat as a problem of unemployment or disability the failure of older persons below that age to secure work. This is the method adopted by Ireland.

It is also important to consider such factors as the proportion of persons over the retiring age to the working population or to the total population. Thus the birth rate may be a factor to be considered since where a high birth rate has produced a large "burden" of children for the productive labour force to support, there will clearly be less willingness to support also a heavy burden of retired pensioners.

Numerous technical problems also arise: first it is perhaps necessary to devise a more sophisticated test of retirement. No country has been prepared to insist that beneficiaries perform no paid work at all, but one interesting technique which may in the future be developed lies in

requiring the claimant merely to relinquish his present employment, it thereby being left to the state of the market to determine whether the beneficiary is in fact forced to retire. This technique is used by the American Railroad Retirement system. It is suggested however that this is only effective in schemes relating to a single industry. Certainly when between 1939 and 1955 the American Social Security Act withheld benefit only in respect of earnings in employments covered by the Act, it was felt that considerable inequity resulted. This example also shows the lack of wisdom of adopting techniques merely because of administrative convenience, since in this case the institution would have records only of insurable employments which they could check to ensure that the claimant was not still earning wages.

A further method of dealing with the retirement question is by reference to the volume of earnings - so that as earnings increase, the pension is reduced. The difficulty of this solution is partly in the effect of the changing value of money on money wage levels, so that the upper limit on earnings must be continually altered to keep in line with wage rates: partly that the system discriminates against the skilled worker, since even a small amount of part-time work may bring him up against the upper limit: and partly because it is prone to be understood as a means test - though this is fallacious, since it applies only to income from work. An alternative solution would be to abandon the "all or nothing" type of

test and substitute for it a sliding scale whereby smaller reductions in benefit would accompany larger increases in earnings.

Some systems have been designed to encourage postponement of retirement. Thus Great Britain provides positive inducement in the form of higher pensions after several years postponement.

In summarising, it might be said that the potentialities of this technique depend upon the importance attached by society to purely financial considerations as against the greater output received from longer employment of the aged: and the attitude of aged persons towards additions to ultimate pension as an inducement to work beyond the minimum pensionable age.

614. Methods of fixing the retirement age.

A second difficult problem in connection with old age is concerned with the exact point at which the normal age for retirement is to be set. A wide variety of ages from 55 to 70 is to be found among the different existing schemes. If we take a sample survey of 36 schemes, we find that 20 of them set the age at 65 for men, 9 at 60 and one even at 50, while 5 schemes, all in Western Europe, prefer a higher age at 67 or 70. If we consider this analysis regionally, no "advanced" scheme from Northern or Western Europe accepts a lower age than 65: yet in the rest of the world there is approximately an equal division between those fixing the age at 65 and those fixing a lower age.

Clearly conditions differ from one country to another

and some satisfactory technique needs to be found which will regulate the normal age so that it is reasonable having in mind the economic development of the country. Possibly the most efficient method of accomplishing this in theory is to use a sliding scale based on a percentage of the total population suitably modified to take into account changes in the standard of living. For example, in Western Europe at the present moment the age of 65 divides approximately 10% of persons above this age from the 90% below it. In Afro-Asian and Latin American countries this figure will be much nearer 5% and is sometimes much less, a lower age being required to separate off 10% of the population. This technique is a little rough and ready for two reasons. In the first place, it would probably be more realistic to take as a measuring rod the relationship between those above the proposed retiring age and those of working age, rather than to include persons below working age in the comparison. On the other hand the rates of persons of working age to those too old or too young seems to remain much more constant ~~(See Appendix)~~. For example, the crude figures of children per 100 population vary from 40 in Latin America to 24 in Western and Northern Europe: the variation in the numbers of people over 60 per 100 for the same areas is 5 to 14. Thus the crude figures give a ratio for children of 10:6 and old people 3.5:10. If, however, the figures are compared per hundred persons of working age, Latin America has 73 children and 9 old people to Europe's 39 and 22 respectively, thus the total

persons not of working age to those of working age is 82 in Latin America and 61 in Europe, a ratio of 10:7.5 . Thus, looked at in this way, it will be seen that the burden carried by the working population does not vary so much between advanced and under-developed areas.

These figures show that the use of the 10% rule operates to increase the burden on under-developed countries, since it does not take into account their considerably larger population of children. A fair solution, however, would seem to fix the age at 65, but to allow a raising of this age so long as a ratio of pensioners to total population does not fall beneath 10% (or the ratio to working population of 20%). By this method, as a country develops, its payment of benefit to children will drop as its payment of benefit to pensioners rises, with a gradual decrease as its percentage of pensioners rises above 10%.

615. International practice on old age and retirement.

These questions were not canvassed at such length when the discussions took place on the draft convention. In the draft, A.27 defined the contingency as survival beyond a prescribed age, though it allowed the right to benefit to be made conditional upon cessation of regular economic activity. Clause (2) provides that the prescribed age should not be more than 65 or such higher age that the number of residents having attained that age is not less than 10% of the number of residents under that age but over 15 years of age.

Poland again opposed the test, arguing that there should be no requirement for cessation of regular work. The UK suggested that there be provision for reduction or extinction of the pension where the beneficiary, after retiring from regular work, has substantial though occasional earnings. The relationship between old age and retirement was then set out as follows. First, under most schemes of general application, the right to the pension is acquired at a prescribed age, whether or not the claimant retires from gainful activity. Second, under most special schemes, the pension is awarded at the age at which retirement is compulsory for the persons concerned, but the person is free to work outside that scheme. This distinction is not possible under the original wording of the draft convention. Third, under some schemes, an intermediate policy is adopted, whereby the pensioner is allowed to engage in gainful activity, but excess over a certain amount is deducted from his pension. Whether this practice would be allowed is not clear from the wording of the convention, as was pointed out by the UK.

In view of these considerations, the IL Office proposed that amendments should be adopted allowing the right to the pensioner to be made dependent on retirement from such kinds of gainful activity as may be specified and also allowing the reduction of the pension in cases where the pensioner's earnings exceed a prescribed standard amount.

Difficulty was also caused by the setting of the prescribed age. Poland opposed the alternative 10% rule on the grounds that the pre-war conventions number 35 and 36 provided for a maximum requirement of 65 and the Income Security Recommendation recommended 65 for men and 60 for women. On the other hand Finland wished to reduce the 10% rule to an 8% rule. Norway felt that age distributions and social and economic circumstances differ so much in different countries that it would be unwise to fix any particular age. Since these views are mutually opposite, the original text was retained, though it was intended that there should be provision for a debate on this subject at the Conference itself.

The Office based its defence of the proposed text on the following lines: whereas at one time the lowering of the pensionable age was under consideration to counter the effects of the economic crises between the two wars, in recent years the ageing of the population has led to rather an attempt to raise the age of retirement. There are two aspects of this latter problem: the lengthening of life and the lengthening of the span of working life. Naturally the position differs according to whether the two phenomena coincide or do not coincide. The Office pointed out that taking into account the present demographic data it appears that a maximum age of 65 with an alternative 10% rule is the fairest that can be devised, since examination of the demographic data shows that the 10% ratio gives an age over 65 in 18 European countries

plus the US, Canada, Australia and New Zealand. In fact only three of these countries do have a pension age higher than 65 - Ireland, Norway and Sweden.

The 1952 Committee on Social Security rejected a government's sponsored resolution allowing the setting of an age higher than 65 (but still subject to the 10% rule) but accepted an exception allowing a 9% ratio for 5 years to take account of fluctuations in population structure.

616. E) Invalidity benefit: General considerations.

The definition of the contingency of Invalidity poses few problems in comparison with that of Old Age. As has been previously outlined, invalidity is in fact a special case of long term biological interruption of income which has commenced earlier than the set "retiring age". There are in fact two rough roads by which a claim may arise for this benefit. Either failing physical health in later middle age may, as we have just said, bring on premature old age: or congenital malformation may render a child mentally or physically incapable of earning sufficient income for its maintenance. Clearly the latter road to invalidity benefit has to be very carefully planned in conjunction with the State Mental and Chronic Sickness Institutes in the same way that Old Persons' Homes must be dovetailed in with the payment of an Old Age pension.

Where Invalidity arises through the first road, its first commencement will be covered by the Short Term Sickness Benefit, which is based as to rates of benefit on previous earnings. After a period of time, usually taken as one year, the status of the illness must undergo

a change. Clearly at this stage there are two possibilities: either it has by this time become clear that the illness is incurable so that the claimant is unlikely ever to receive a full income, or the illness, though long, is likely to be cured in due course. Now the importance of these twin possibilities lies in their effects on the position of dependents, particularly since it will be remembered that the Sickness Insurance rate is tied to past earnings, while the long term benefit rate is thought most properly based on subsistence costs, each dependent being given a separate claim. If the illness is likely to become invalidity, then a dependent spouse must face the change-down of the benefit received from one short term benefit geared to previous income to two long term benefits geared to subsistence costs. If, however, the illness is curable, then it seems preferable that the one year period of sickness benefit should be extended. This can certainly be done in the case of illnesses such as tuberculosis known to take a long time before final cure.

Where, however, it is clear that the invalidity is semi-permanent or permanent, the further problem arises whether the dependent wife should not herself make a contribution to the family income. This question will not, of course, arise where the invalid needs constant attention: but, where this is not so, consideration of the wife's ability to add to the family income must apply, in the

same way as in the contingency of Death of the Breadwinner, under which heading the theoretical considerations will be discussed.

617. International practice on invalidity.

In international practice, however, these considerations have been neglected and no mention is found in the discussions on the draft convention. Indeed Article 53 defines the contingency to include "inability to engage in any substantially gainful activity which is likely to be permanent or persists after the exhaustion of the periodical payment in respect of incapacity for work." Holland, Yugoslavia and the UK showed in their comments some doubt as to the types of benefit which would be included in this definition. The Office interpreted the wording as excluding the proposition advanced by the United Kingdom, namely the payment of sickness benefit without time limit in cases of total incapacity only, since this would conflict with the phrase "substantially gainful activity".

The 1952 Committee on Social Security amended this form by accepting a resolution sponsored by the Employers' delegates to make clear that when some gainful activity is to be admitted without disqualifying from benefit, the extent would be left to national legislation.

618. F) Death of the Breadwinner: general considerations.

As we have seen at an earlier stage of this discussion, this contingency is in fact a special case of long term biological interruption of income which arises where the family income is interrupted by death rather than by old

age or invalidity. As we have seen in the previous chapter, the latter may have many similarities where the invalidity is of a permanent character.

The difficult problem which arises here turns really on what meaning is to be given to "dependent". Clearly it is wrong that a newly married wife without children who is widowed while she was continuing in her pre-marital employment should receive a pension for her life. On the other hand, an elderly widow, whose husband has died a few years short of pensionable age should not be forced to return to a labour market which she has left (if she ever belonged to it) many years previously. What principles, then, do apply to determine whether a widow or an invalid's wife should receive benefit for life or only for sufficient period to enable her to earn her own income?

If we consult our survey of 36 existing Social Security schemes to which we have previously referred, we may find some indication of what tests are generally considered suitable to be applied. Thus 15 of the schemes agree in not requiring a widow to earn her own living if she is looking after children, and this clearly seems to be a sensible conclusion. The position is not so clear, however, as to the position of such a widow when the children have become adult, but this eventuality will be further discussed at a later stage. Nine schemes exempt the widow from earning her living where she is invalid, but this does not, of course, further the solution. 20 of the schemes, however, fix an age at which the widow need not

earn her living if she has attained it on the death of her husband. The suggested age varies from 45 to 65, five countries favouring 60, three 55, four 50, and the others various ages between the limits. If, however, we examine the comparison between the ages set by these schemes in this case with the ages set for general retirement in old age, we find a strong difference of opinion between those whose age for a widow is set 5 years below the old age mark and those whose age is set 15 years below. Each of these points of view is held by 5 nations, the others varying between a 22 year reduction and no reduction at all. There seems no clear distinction between the nations grouped around these two figures.

A possible solution is provided by Switzerland and Israel, both of them paying a varying benefit according to the widow's age on her husband's death. The former varies between 60% (of the pension to which the husband would have been entitled) if the widow is 40 and 100% if over 65: the latter between 50% at 40 and 100% if over 50.

There seems to be a feeling that a widow without children below the age of 40 should receive no permanent benefit, this age presumably being somewhere near the average age of a mother whose children are becoming old enough to earn their own livings. Clearly, however, the fairness of the use of a sliding scale of benefit above this age depends very much on the chance of the widow obtaining employment, though this argument applies also to the widow under 40. It might be suggested that it is right that this aspect of

the problem should be left to Unemployment benefit. This would appear to put the widow over 40 on the same level as the widow under 40 who has not been able to obtain employment. Perhaps the difference can be explained in this way:- a widow over 40 may well suffer from long term unemployment if she has no special skill. Nor in many cases will she have a previous income on the basis of which short term unemployment benefit can be paid. In this special case, therefore, the payment of a long term subsistence benefit may be necessary and this case seems to fall under the general heading "unemployability" which is considered below.

619. Special position of the older widow.

If, however, the plight of the older widow is left to be solved by the provision of unemployment or unemployability benefit, a particularly subtle objection can be raised thereto. The argument runs as follows:- It is clearly an important feature of the existing social structure that the procreation of new members of society should be specially protected from the harsh winds of want and poverty. This fact is recognised, for example, in the payment of family allowances. Society encourages, therefore, the mother of a family to give her full time to the raising and home education of her family. But society does not, once the children are adult, require the wife to relinquish her special position and throw herself upon the general employment market. Why, then, should society require a

widow, who is in even greater need of society's indulgence, to do so.

This argument is difficult to answer, but the fallacy lies in the idea that the older mother has society's indulgence in not becoming a further breadwinner after her children have become adult. Nothing in the patterns of social security suggested in this discussion supports this fanciful idea. The fact that it is not the general social custom for such persons to join the labour force (as it is in some agricultural communities) cannot here be taken into account. The other view would logically require the adoption of wives' allowances on the basis of children's allowances - a proposal which would meet with great opposition, though it is to a great extent recognized by many income tax systems.

Three other points require attention:-

In the first place, a number of schemes provide an initial benefit to all widows for a limited period. On analogy with invalidity, where an initial short term benefit is provided through Sickness benefit, this seems essential and it is suggested that this benefit should be provided for a period of one year, during which time the widow can adjust her expenditure to the subsistence level benefit.

Secondly, some schemes place a claimant widowed at, say, the age of 42 in a different position from the widow who is widowed at a younger age, but is 42 when her youngest child has become adult. The theoretical position maintained in this discussion, however, would make no distinction between these two positions.

Thirdly, a number of schemes require the marriage to have been in existence for a certain period before recognising a claim by a widow. This is intended as a safeguard against abuse, but is clearly unnecessary in connection with the ungenerous principles enunciated in this discussion.

Finally, in discussing the theoretical aspects of Invalidity and Death of a Breadwinner, it must be clearly said that the devices which have been discussed and dismissed may be essential in a national scheme where no adequate unemployment or old age system is in existence.

620. International practice on survivorship.

When, however, the definition of Death of the Breadwinner was discussed during the preparations for the 1952 Convention few of these arguments were considered. One of the most important points discussed was the proposal put forward by Yugoslavia to include an invalid widower who had been dependent on his insured wife. This was dealt with under Article 59 of the draft Convention which defined the contingency as including "presumed incapacity for self-support of the widow and children following the death of the breadwinner"; such incapacity shall always be presumed to exist a) where the widow is responsible for one or more children b) where the widow has reached a prescribed age or is an invalid c) where the child has lost its breadwinner.

Chile wished to include temporary relief to widows without children: Holland, however, only if she was aged

or an invalid. The UK supported this point and wished to reduce or suspend the pension if the widow's earnings are high. In practice the conditions under which pensions of this nature are paid vary considerably. The formula was therefore revised so that as a general rule the child will receive benefit whether the protected breadwinner was the father or the mother. In the case of the widow, though a pension must be granted, national regulations may prescribe conditions which must be fulfilled for the pension to be payable. The combined pension payable to a widow with two children must equal, as will be later seen, 80% of the standard wage. It is thus left to the individual state to decide whether a widower incapable of self-support should be entitled to a pension.

621. G) Unemployability.

During the discussions of the Long Term Contingencies, one particular problem has appeared to be continually hovering in the background and does not seem to fit fairly and squarely under any of the existing headings - namely permanent interruption of income from non-biological causes. It is convenient for the present to allude to this possible contingency under the title "unemployability".

Lengthy discussion, however, does not seem necessary, since many of the difficulties involved are those discussed under the heading "unemployment", to which Short Term benefit this is the Long Term equivalent. As has been previously indicated, many of the claims which might properly come under this heading are dealt with through existing social

institutions rather than by the payment of money benefit. Thus, since Lord Keynes, it is now known that long term unemployment can best be solved by public works rather than by monetary payments, since long unemployment has a distinctive effect on both character and akills. In the same way unemployable mental defectives are best benefitted in this way.

On the other hand, this class does include persons, as the older widow who has been previously discussed, who are normal in every biological way, and yet cannot readily be found employment owing to a complete lack of any skill. They are in fact marginal workers whose employability may vary with the economic state of any society. It is clear that in this case at least the definition must not be interpreted harshly.

622. H) Employment Injury: general considerations.

It has been earlier suggested in this discussion that the contingency of Employment Injury is anomalous to the true framework of social security protection. As has been outlined, the prominence of this contingency in established schemes is due to historical and administrative reasons. In the early days of social security, two main lines of government action appeared, poor relief, or Social Assistance, and Workmen's Compensation or Employment Injury Coverage. The early development of the latter took place for two reasons: first that, in as much as there was a general feeling that coverage should be reserved for those who have rendered some benefit to the

community, it is clear that employees come within that category: second that from the administrative point of view, a contingency which is based extirely on employment is the easiest to administer, since contributions and other formalities can be organised through employers, a class easily lending itself to administrative organisation.

It is not possible, however, completely to explain the continued existence of Employment Injury in Social Security Schemes among nations both advanced and under-developed. In particular there seems to be a general feeling that compensation (note the use of this term rather than "benefit") should be paid at a higher rate than for other contingencies. In theory, however, there seems no good reason why the rate of benefit for loss of income or of medical care in a developed system should be any different where the contingency occurs through employment injury than where it occurs from injury (other than self-inflicted or otherwise "deserved" injury) arising from any other cause. On the other hand, in a system which is not fully developed, there might, in theory, be a case for its continued existence.

In practice, however, it seems that international practice is in this case insisting on the provision of a benefit which comes outside the normally accepted boundaries of social security. It is not only the replacement of insufficient income or excessive expenditure which is required, but the provision of some sort of compensation for the injury which has been suffered.

This suggests that what is in effect being provided is recompense for lack of earning power in the future. This discloses a considerable weakness in the scheme of social security which has been suggested up to this point. It has been suggested that the appropriate rate of benefit for long term contingencies should be based on subsistence rather than on previous earnings. This has seemed a particularly hard rule in the case of invalidity, since a promising career may be cut short by accident or illness and an "investment" of perhaps ten years of education and vocational training, which would otherwise have produced a high standard of living, instead leads merely to subsistence benefit. This may seem particularly hard where the accident is caused in furthering the economic development of the community.

623. A new development: "capital security".

The principle which seems to emerge from this discussion is that under some circumstances it seems generally thought right that the State guarantee the payment of compensation in addition to, or at a higher rate than, the payments normally made in the case of invalidity. The compensation payable should perhaps be based not on the cost of subsistence, nor truly on the previous wages paid, but on an estimate of the diminution of future earned income. In many cases, of course, the only means by which this can be calculated is on the basis of past earnings, but the use of the latter merely as a means of

calculation and its use as a basic principle should not be confused.

It seems, thus, that the distinctive feature of Employment Injury, notwithstanding that for administrative purposes it incorporates many of the aims and methods of Invalidity benefit, is that it is concerned with future income, or perhaps we might say the future dividend on present "educational capital", rather than with present income.

If this idea is admitted (as it clearly is by international practice - though it is not always easy to separate the special "capital insurance" elements from the ordinary invalidity benefit features of a given scheme), then it is difficult to see where the boundary to its influence is to be drawn. Clearly in practice it has been restricted to accident or disease happening during employment. But there seems no logical reason why this should be so; the self-employed man injured without his fault while at his work suffers no less of a catastrophe nor can he be said to be serving his fellow beings any the less. Is the employee injured without his fault on his way to work in a car accident to be included? Why is he any the less deserving of benefit if the accident takes place without his fault while he is travelling for pleasure?

The truth is that if this problem is looked at from the point of view of income security, as the questions just posed so look, then no sensible or logical answer to them is to be found. The reality of the feeling behind the "employment Injury" extension lies in a subconscious belief

that the State should stand behind the law of tort or delict in respect of damages. This tendency can be closely seen in the fact that many Employment Injury Schemes exist merely to ensure that the Employer is able to pay the injured Employee proper compensation for his loss, the compensation to take account of loss of future wages, and are thus state-backed insurance schemes, based on Employers' liability.

624. State backing for the law of Tort.

The working of State-backing of the law of Tort in respect of damages would presumably operate in two halves as follows: let us suppose that an automobile accident between two cars has taken place, causing damage to both cars and injury to both drivers. The "fault" causing the accident may have arisen in a number of ways. It may have been due to the negligent driving of either car or of a third party, in which case a law of tort properly based on fault will lay the liability on the negligent driver. On the other hand the accident may have been caused by a dangerous condition or construction of the road, in which case if neither driver knew of the condition of the road and no sufficient warning signs were posted neither driver may have been at fault and yet an accident may have been caused. It is not difficult to imagine conditions where this may happen. Again, where one person is at fault, the damage caused may be out of all proportion to the degree of fault. For example, the virtual destruction of the port of Halifax after the

explosion of a munition ship in 1917 was caused by the negligent navigation of another ship, but can it be said that all the damage should be regarded as the liability of that navigation officer? This is, of course, a familiar problem which is surrounded by considerable difficulties, but it is suggested that many of the latter would not arise if there were a State-backed scheme of tortious damages.

Referring again to the circumstances related above about a car accident, there would seem to be two main occasions under many existing tort laws on which an injured party may not recover compensation for his loss. First, when no party involved in the accident can be said to be at fault, or where a party at fault cannot be said to be liable for all the damages resulting from the accident: second, where the person held liable for the accident has not sufficient resources to pay adequate compensation.

625. National practice on "capital security".

Both these principles are applied intermittently to differing sets of circumstances. Thus, in the case of the Halifax disaster, aid was provided by the authorities to the injured and homeless. Again, during the 1939-45 war, the United Kingdom operated a War Damage scheme under which compensation was paid for damage to property in certain contingencies flowing from the war. In the second case, government backed motor insurance schemes, as in the Province of Saskatchewan and the United Kingdom, ensure that the victim of a traffic accident does not suffer from the culprit's inability to pay.

These examples seem to show the hesitant first steps towards some form of capital insurance. At present the existing schemes merely cover the most noticeable gaps. Clearly there is no reason why a disaster destroying a village should qualify for relief of this kind when a disaster destroying only one house or business does not. What we must hope to see, therefore, is the development of capital security under rules whereby any undeserved capital loss receives compensation either from the party at fault or from the social services. This, however, looks very far into the future.

626. International practice on Employment Injury.

Discussion on Employment Injury before the 1952 Convention did not, however, delve into the theoretical aspects which have been outlined here. The subject was treated as a special branch of invalidity requiring separate treatment. A.33 of the draft convention defined the contingencies covered as follows: a) a morbid condition, b) incapacity for work arising from a) and involving suspension of earnings c) total loss of working capacity and partial loss in excess of a prescribed degree likely to be permanent and corresponding loss of faculty d) presumed incapacity of self-support of the widow and children following the death of the breadwinner: such incapacity is always presumed where i) the widow is responsible for one or more children ii) the widow has reached a prescribed age or is an invalid iii) the child has lost its breadwinner. The similarity of approach to

the discussion on Invalidity is readily apparent.

Comments on this article can be considered in three parts.

A) the definition of employment injury: the UK was in favour of the specification of diseases, rather than the open "any disease resulting from employment". This was the technique used in the Workmen's Compensation (Occupational Diseases) Convention (Revised) 1934. To meet this point of view, the term "prescribed diseases" was substituted for "diseases" in Article 33.

B) the definition of incapacity for work or loss of working capacity. Holland wished a distinction to be made between temporary incapacity and that likely to be prolonged or permanent. Germany preferred the term "earning capacity" to "working capacity" in A.32(c), and this latter amendment was in fact made. The Office admitted in its report that these comments had exposed a weakness in the text in that there is not a sufficiently clear distinction between incapacity for work, i.e.incapacity of the victim for his usual work continuing, as a general rule as long as medical care is required, and invalidity, i.e. a condition which has become stabilised or consolidated.[74] In the latter case the criteria applied in determining the degree of invalidity will as a rule be loss of earning capacity in the general employment market or loss of faculty, rather than the incapacity of the victim for his former work. In these comments we may see vestigial signs of a true capital security system.

France and Belgium also argued that the minimum degree of partial loss in respect of which a periodic payment would have to be made should be fixed, and the latter suggested a figure of 20%. The Office, however, thought that the appropriate figure used in different countries varied to such an extent that it would not be possible to propose a minimum degree. In accordance with a French suggestion "total loss of working capacity and partial loss thereof" was changed from the conjunctive to the alternative form.

C) Death of a breadwinner: Belgium felt that full orphanhood presented a special case, which should be treated separately from that of a woman with children (by the addition of a new subparagraph e) providing for incapacity for self-support of a child who is a full orphan and by deleting (d) (iii). This would mean a further alteration in the schedule to Part XI giving a benefit of 10% of the individual earnings or standard wage. Chile argued in favour of a pension for a childless widow irrespective of age or invalidity. The Office felt, however, that these suggestions were amply covered by the text, since the 40% rate to be paid could be covered either by granting a pension to the widow in her own right with supplement for the children, or by granting pensions or family allowances to the children only provided the rate was sufficient to cover the amounts prescribed for standard beneficiaries. However, comments here and on Part X, which we will discuss below, suggest that these intentions were not made

sufficiently clear. The 34th session seemed to wish to treat death due to employment injury on the same lines as death from other causes, in view of the possible future amalgamation of these two branches of social security, an interesting and significant comment. In order to clarify the situation, it was proposed to make it mandatory for a member ratifying this part to pay a survivor's benefit to the children, whether half or full orphans, and whether the breadwinner was the orphan's father or mother, but to leave it to the national legislation to prescribe the conditions in which the widow shall be entitled to compensation in her own right. The figures show that these conditions vary widely, and that survivors pensions are sometimes paid in the form of family allowances that meet the requirements of the minimum standard.

627. Relation of benefits to the definition of Employment Injury.

It is also important at this point to consider the benefits to be provided. A.34, which is wider than the equivalent article for the contingency proper of Medical Care, requires a) General Practitioner and specialist in-and-out patient care, including domiciliary visiting b) dental care c) nursing care at home and hospital d) maintenance in hospitals and institutions e) medical and surgical supplies f) care furnished by other professions legally recognized as allied to the medical profession. Under the temporary reduction clause the following are to be provided a) G.P. care b) available specialist care c) maintenance in hospital d) essential pharmaceutical

supplies. These provisions bring benefits down to the general level to be provided under the branch providing medical care. A further subclause stresses that the aim of treatment should be to restore maintain or improve health and ability to work of the injured man, and to attend to personal needs.

In the comments by the Governments, Denmark assumed that A.34 (a) a) and d) could be provided under health insurance: Poland, as was to be expected, proposed that no temporary exception be allowed: Germany requested confirmation that medical care could only be given by practitioners admitted to insurance practice, and the Office saw nothing in the regulations to prevent this. The UK raised the question of cost sharing, particularly in regard to the possible unification of all medical care services under a health service making no distinction as to the cause of the illness. In this event, the same standard of cost sharing would have to be set for both Parts II and VI. For this reason the Office proposed to introduce cost sharing in this part.

Denmark and New Zealand wished to allow the payment of a lump sum for permanent partial loss of earning capacity or death of the breadwinner. It is important to notice under the wording of the draft convention that a member State is free to fix a minimum degree of permanent incapacity giving a right to a pension and also to prescribe the conditions in which a pension must be paid to a widow.

France felt that a distinction should be made between

permanent and temporary incapacity and further that the reduced benefit for partial disability need not be proportionate to the disability. These suggestions were incorporated in the revised text.

Article 36 of the Draft Convention provided for payment "to a person protected who was employed in the territory of the Member, if the injury is due to accident at the time of the accident and, if the injury is due to a disease at the time of contracting the disease" and for periodical payments on death to the widow and children.

On the question inherent in this Article as to the place at which the injury occurred, Poland wished such to be covered wherever it happened if the work was done for an employer established inside the members territory, a matter of importance to transport workers. Belgium, referring to the 1925 Equality of Treatment (Accident Compensation) Convention proposed the addition of "irrespective of their place of residence". The Office replied to these comments by pointing out that at the 34th session of the Conference the committee on Social Security by 70 votes to 2 deleted provisions defining the application of national legislation outside the national territory.

628. I) Medical Care: General Considerations.

In discussing the definition of the contingencies requiring medical care, one must also bear in mind the nature and scope of benefits to be provided, since in contrast with cash benefits the two cannot easily be

separated. We therefore turn to trace the development of the ideas of medical benefits through the discussions on the 1952 Convention. It will be remembered that the Philadelphia Recommendation provided that complete preventive and curative care should be available at any time in any place to all members of the community without hindrance or barrier of an administrative financial or political nature or otherwise unrelated to health.[75] We need not consider the exact scope of the medical services to which this seems to relate though we may say that the scope seems to be extensive. Out-patients care without limit other than that arising through non-availability of medical supplies is provided in many European countries, though it is also common to find a time limit set on the benefit, both in Europe and Latin America. Cost sharing by the beneficiary is also a feature of 6 European systems. In New Zealand the doctor is paid only up to a fixed amount, which is normally three-quarters of the cost. In Asian and other non-European countries medical care is sometimes provided through the out-patients departments of hospitals, generally without charge. Where time limits are imposed, they are normally waived for certain specified forms of illness.

Hospital care is closely linked with specialist outpatient care in countries that provide such care mainly through hospitals, as in most Asian and English-speaking countries. Under sickness insurance schemes restricted in scope a limit is often imposed on the length of hospital treatment. In dental care, as in

other programmes, the chief restriction is the shortage of trained staff and equipment. A marginal service which may be provided in certain circumstances in Szechoslovakia, New Zealand and the United Kingdom is domestic help where the housewife is ill and bedridden. Where pharmaceutical supplies are provided, they are usually restricted according to lists established by the medical service or by other methods of ensuring economical prescribing. Sometimes as in Denmark, the limitation is imposed by supplying only essential medicines free of charge, though the definition of the word "essential" causes difficulty. A further device employed is that of cost sharing which is sometimes employed for medicines though not for services, as in Denmark and Greece, or at a higher rate than for services as in Iceland or Sweden. Sometimes a small uniform charge is levied, as in the United Kingdom.

Certain special problems are found to arise in rural countries. There seem to be two main lines of development. Thus medical care services for industrial workers in establishments capable of adequate inspection have been planned in many such areas, since the administrative and financial problems are clearly the least difficult in such establishments. Such schemes are to be found in Greece, Iran, Turkey and Venezuela and are planned for Ceylon, Egypt and the Phillipines. The second line of approach seems to be the development of national medical care services for the whole population, since it is felt that there is a great need to reach the agricultural population and the

out-lying areas. It seems that these services are often older than the localised schemes. When first introduced they are usually reserved for the indigent and carry a means test, though as the scheme becomes better established an attempt is made to remove the means test. This has been the case as far as out-patient care at clinics is concerned in Ceylon, Malaya, India and Egypt. A particular difficulty is the extra pressure put on hospitals by the non-bedridden patients who must enter the hospital to receive adequate attention, since specialist services are not available near their homes.

A special difficulty attending these twin methods of approach lies in the fact that the factory schemes often reach a higher standard than the widespread schemes, though the latter are intended to be the foundation of an all-inclusive scheme.

International practice on medical care.

This survey shows that the difficulties of finding trained personnel and adequate supplies prevent the insistence on a complete range of medical care before ratification in this respect. The range of care to be provided therefore must clearly be restricted in some way. It was suggested by Report IV (1) that the following items should be included: care by general practitioners, such specialist care as is available at hospitals, hospital in-patient treatment where essential for treatment, and pharmaceutical supplies in other cases.[76] Naturally to cover extraordinary circumstances, as epidemic or war, there should be provision that such care should be within

the limits of medical care adequate to health conditions normal for the state member concerned.

Since, as has been said, where protection is provided for employees there is often a far higher standard of care than under a general scheme, it was therefore suggested that for a minimum standard in the event of a condition requiring medical care under a scheme providing both medical and cash benefits the minimum duration should be 26 weeks, in a case where the beneficiary is an employee. On the other hand, medical benefits should not be suspended as long as the patient continues to be incapable of work and is in receipt of cash benefit, even if this means extending the period beyond 26 weeks. For dependent wives and children of protected employees, a shorter period, namely 13 weeks, was suggested, since the latter is a particularly heavy responsibility for a country just embarking on social-security.

These views were circulated to the member Governments and 3/4 were in favour of the general tenor of the proposals made: there were suggestions both for a restriction and for an increase of the benefits to be provided. On the suggestion of the World Health Organization, a further clause was introduced to the effect that the institutions administering the service should encourage the persons protected to avail themselves of the services provided for them. A further suggestion of interest that the inexpensive, rather than the essential, medicines should be excluded was not accepted. The only change therefore made was the deletion of the reference to the limits of medical

facilities adequate to normal health conditions, since it was thought to be understood that such obligations would be suspended in time of war.

The same provisions in respect of maternity were accepted by a large majority, there being only a few suggestions, mostly concerned with a lowering of the standard or the allowing of a temporary standard, which the ILO felt could not be accepted. The provisions on employment injury were also accepted and the higher standard was retained, though it was not required that a full range of care be provided in this case unless ratification was made of the separate branch dealing with employment injury.

The States which did not feel themselves in agreement with these suggestions were the slightly developed countries of Asia, which wished for temporary exceptions, and the United States which sympathised with this point of view but also felt that many other details of the scheme should be reconsidered.

At the 34th Session, the Committee on Social Security discussed this subject and generally accepted the early decisions by a majority.[77] An exception was admitted for the benefit of slightly developed countries which would permit them to ratify on the basis of an employment injury scheme providing only the range of care required under the normal standard for a branch providing medical benefit generally.

629. Special problem of cost sharing.

One special problem which must be considered here is peculiar to medical benefits, namely the question of cost sharing. The principle of cost sharing is an accepted device to forestall excessive or abusive demands on a scheme, a danger particularly likely to occur in the first few years of a scheme providing pharmaceutical benefits. It was suggested in the discussions, however, that this payment by the beneficiary be restricted to 1/3 of the cost of the benefit in question.

When the question was circulated to the member countries of the ILO, permission to introduce cost sharing provisions was favoured by advanced and slightly developed countries alike, though there was some feeling that this might prejudice the effectiveness of the medical care service. Further suggestions were made to exempt long term illnesses from this provision, or at least to reduce the percentage cost which might be paid. The ILO adopted the first solution in respect of illnesses which arise from maternity, employment injury, or a disease known to entail prolonged treatment, but susceptible of being cured, or unless it would involve hardship.

At a later stage opposition developed to the permitted percentage of cost sharing, on the lines that it should not be permitted for employment injury or hospital treatment. 5 governments , on the other hand, felt that the limit of 1/3 was not sufficiently flexible. An examination of the available figures suggested that according to the practice of existing schemes, this figure

was too strict. It was therefore proposed to alter the text so that hardship should not result from the imposition of cost sharing.

630. Advanced Standard.

The advanced standard was also considered, particularly in connection with the Philadelphia Recommendation and with emphasis on preventive measures, it being suggested that a complete range of care be provided. Those countries which favour the inclusion of an advanced standard are in general agreement to this suggestion. Certain reservations were made as to dental treatment, Denmark suggesting a restriction to those persons who had had access to free treatment since childhood, and a number of suggestions were made reducing the liability to provide medicines. The final proposals, therefore, contained a clause allowing exemption of dental care, except in certain cases such as maternity and employment injury. The ILO felt that it could not reduce the standard as regards pharmaceutical benefits, since the existing conventions require the supply of such benefits. On the suggestion of the WHO a new clause was inserted requiring the periodic examination of the persons protected to make certain they are in good health. There is also an obligation on the part of the institution providing the service to co-operate with the general health services in the prevention of disease, and also with the existing rehabilitation services.

631. Draft Articles on Medical Care.

The relevant clauses in the draft convention incorporating these clauses were set out as follows:-

Article 9 defined the contingency as covering any morbid condition, whatever its cause, and pregnancy and confinement and its consequences. The Argentine pointed out the difficulty of accurately defining a morbid condition, but the Office thought that for practical purposes this would include any condition other than those mentioned which required medical care.

Articles 10, 11 and 12 outline the range of care which is to be provided. In the case of a morbid condition, GP care, available Specialist care at hospital, maintenance and nursing in hospital where necessary, and essential pharmaceutical supplies are to be provided: in the case of pregnancy, qualified care before, after and during confinement and maintenance in hospital where necessary. Under Article 10 (2), the beneficiary or his breadwinner may be required to share in the cost, except where the condition is regarded as entailing long care and providing that this does not involve hardship, the proportion paid by the beneficiary nowhere exceeding 1/3. Article 10 (3) sets the aim of the benefit as restoring or improving the health of the person protected and his ability to work and to attend to his personal needs. Sub-article (4) requires the state to encourage the persons protected to take advantage of the scheme.

The Canadian government felt that this formulation did

not place sufficient emphasis on preventive measures, which should be part and parcel of the international regulations. The IL Office, however, felt that the real aim of the convention was the more limited aim of providing benefits in specific contingencies. Some difficulty was felt over the specialist services, since the World Health Organization consultant group recommended that specialist care should not be restricted to that available in hospitals. The figures seem to show that even in slightly developed countries, specialist services are commonly made available otherwise than in connection with hospitalization. The text was therefore amended to cover the provision of such specialist attention in hospital for out-patients where available outside the hospital. The provision of all pharmaceutical supplies at the minimum standard was thought excessive by the governments of Canada and Norway. The latter suggested a limitation to hospital use and the former a limitation to essential life-saving drugs, the cost of which exceeds a limit. The WHO group favoured only a limitation to essential supplies regardless of cost. The original text was therefore amended by adding the further qualification "as prescribed by medical or other qualified practitioners", despite the fact that this was bound to add to the practitioners work-load.

On the advice of the WHO group, the text "maintenance and nursing in hospital" has been replaced by "hospitalisation" since this was felt to be more comprehensive. Canada further argued that midwifery should not be

compulsory in every maternity case, since in many countries the attendance of a doctor is customary, a point which was supported by the WHO. The text was amended accordingly.

632. J) Family Allowances: General considerations.

In this, the last of the contingencies which we are attempting to define, the discussion must take a somewhat different turn, since this is the only contingency at present in which cash is provided in reimbursement of necessary expenses rather than in replacement of interrupted income. In this very fact lies one difficult problem - whether benefit should be provided only in kind or whether by cash as well.

The theoretical basis of this contingency springs, as has been previously suggested, from a desire to ensure that the education and development of a child is not prejudiced by reason of the poverty of his parents, or, even more, by having been born into a large family of children who by their very number cause financial stress on the family's resources. We must first ask, therefore, whether the "contingency" is the existence of children in a family, or the existence of too many children for that family's income. The answer depends upon whether the average wage paid is sufficient for the maintenance of one child.

Clearly, this contingency is extremely dependent on the existing social and economic circumstances of each country. Bearing in mind, however, the great superiority of payment in kind (discussed elsewhere in greater detail)[78] it seems that it is impracticable to distinguish between

first and other children and that, therefore, benefit, particularly when paid in kind, should be available to all children.

633. Social factors: Family responsibility.

In discussions on this subject the more fundamental question of family responsibility is raised, it being felt that the delicate nature of family relationships should restrain government action which might cause interference. On the other hand, generally speaking it is not wise to say that the provision of a cash grant represents a major redrawing of the limits of the economic responsibilities of the family, since the amount of the cash grant is usually relatively low in comparison with average income: with one or two exceptions, the amount paid is low even in comparison with the cost of maintaining the child. The level of the payment is often subject to demographic considerations as well as to those of a humanitarian nature. Only in the French and Italian systems are payments sufficiently high to influence positively the birth rate. Evidence, as that from Canada, suggests that the greater influence is exerted through the death rate, since more of the children born are kept alive.

Sometimes it has been argued, especially by Trade Unions, that a better solution to the problem would be the payment of higher wages. The unrealistic nature of this suggestion, however, is apparent, since a real increase in wages must be accompanied by an increase in productivity or redistribution of income between sections of the community. Both these courses are clearly of limited

efficaciousness and it is doubtful whether wages would ever be raised high enough to provide an acceptable living standard for members of the very largest families. The evidence suggests that in countries where Labour is strong and productivity high, as Canada and England, the payment of children's allowances does not seem to have had a depressive effect on wages: whereas, in France, where the conditions are the reverse, children's allowances seem to have retarded general wage increases.

An important biproduct of the payment of family allowances arises in countries which aim to provide social-insurance-type benefits adequate for maintenance, since, where family allowances are paid to all members of the community, the possibility of maintaining a substantial differential between benefit and earnings is greater.

634. International Practice.

The definition of family allowances was dealt with very shortly in the discussions which took place before the 1952 Convention. Draft Article 40 defined the contingency covered as including responsibility for the maintenance of two or more children. Yugoslavia wished to include the first child, but Germany only the third. In face of these opposing views, the original definition was retained, though the revised text introduced a provision for ratification on the basis of cash benefits for all children including the first or of benefits in kind or of a combination.

Belgium and Canada were unhappy over the wording of

Article 41 "a beneficiary responsible for a wife" since they feared this might exclude a widow or widower from benefit. This was, however, a misunderstanding of the wording, since these words applied to the determination of the standard beneficiary and not to the determination of the persons entitled to benefit, who receive a benefit reasonably proportionate to that stipulated for the standard beneficiary.

Chapter 7.

Rates of benefit: General considerations.

It has been stated in the introduction to the present discussion that the two most important problems to be considered in the scope of the present discussion are the scope of protection and the rate of benefit. These two problems are clearly closely linked and in discussing the first of these problems it has been necessary to outline the conclusions to be drawn in respect of the second problem.[79]

It would be otiose to restate the theoretical basis which has been adopted, but it will be remembered that the solution most in line with the aims of social security seems to be a short term payment based on previous earnings linked with a long term payment based on subsistence.

There are four theoretical possibilities to be considered: a) relation to need b) relation to assumed average need c) relation to contributions d) relation to previous earnings.

701. A)Relating of benefits to need.

This is the principle on which public assistance in many countries operates, and is said to put the least burden on the taxpayer while allowing adjustment to the precise needs of the individual. The merits of this system obviously make it excellent as a stop gap to remedy the rigidity of other methods of payment, and as such is practised in Great Britain and New Zealand.

There is a tendency in administration to lay down standards as to items which are to be included in the

family's budget and as to the precise sum to be allocated for each item, though often there remains a discretion to increase this amount for special items. Where the unit of administration is large, this tendency is likely to be accelerated, since the necessity for standardization seems to become more urgent. If this tendency is carried to extremes it tends to equate a benefit system based on an assumption of average need. This tendency exposes the difficulties underlying this type of administrative arrangement, since the costs of administration are very high indeed unless some kind of standardization is developed. Nor can the judgment of the beneficiaries' needs be made for once and for all, but a continual reinvestigation must be made. Further the necessity of discussing one's personal affairs with a local official may infuse the wrong atmosphere into the whole administration of the service. The evidence seems to suggest that such a system is greatly disliked by those who are subject to it. Yet any attempt to forego full investigation into the beneficiaries' circumstances is often attacked as too lenient administration. Even so difficult problems arise both in the assessment of the reasonable standard of living to be assured and the decision as to what capital possessions must be exhausted before payment is to be made. Must the resources of the whole family be taken into account? As an example of the sort of factor which has to be considered, the result of the insistence of the British system of unemployment benefit between the wars on computing the family's income as one unit was to cause the break-up of

many families who found they could live more advantageously apart. The tendency where this principle has been applied is to substitute other methods of relief for social assistance and only to retain social assistance as a supplementary and stop-gap procedure.

702. B) Relating of benefits to assumed average need.

The payment of benefits based on assumed average need is usually based either on restriction of scope through the means test or by payment only to persons in certain defined categories. We may see this as two methods of solution to the insoluble problems posed in our consideration of A) above. The art of the application of the means test lies in the definition of what means are to be taken into consideration. This system was widely adopted in the United Kingdom before the last war and is the current system in Australia and New Zealand. The most obvious example of the second method, that of restriction to certain defined categories is to be seen in the payment of old age assistance to all persons over a fixed age. Here again there may be subdivision, as for example in Great Britain where a flat rate of benefit is paid, differing only in respect of sex, age, number of dependents and in the case of married women whether or not the beneficiary was insured in her own right. This system is most widely adopted in the payment of family allowances where the presumed expenses are clearly fairly uniform at each age.

The advantage of this system is clearly simplicity and reliability of administration. It has also proved fairly popular among the beneficiaries, since payment can usually

be made very promptly. It has been suggested that for the greatest ease in administration the means test can be based on income tax returns, but the notorious lack of reliability of the latter clearly makes this a doubtful technique. A further problem here concerns the necessity to review the assumed average need in the light of changes in the general levels of national income and of the cost of living. Should payments be related to the former or to the latter alone? This problem can be more fully considered when we discuss the relation of benefits to previous earnings. At least there is clearly some connection if we are to judge by past practice. During the depression of the inter-war years, Australia reduced the amount of old age pensions in order to keep in line with the general decline of money incomes. Sweden has an automatic cost of living adjustment to its old age pension plan, which between 1946 and 1952 raised the money payment by 35% in accordance with the rise in prices. However, during the same period, wages increased by 90%, so that an increment of a further 40% was given to allow pensioners to share in the general increase in productivity. The United Kingdom system also allows for a five year review in the light of economic circumstances.

703. C) Relation of benefits to contributions.

The method of relating benefits to contributions derives, of course, from the practice of private insurance. It has been frequently employed in old age pension insurance and unemployment benefit insurance. It is a feature of these systems that they are planned to be self-financing. Sometimes, as in the early British system, a token payment

was made by the government to emphasise that the programme, though independently financed was a public programme and with implications for the general welfare. This emphasis onthe insurance principle was important for psychological reasons, since other forms of relief very often were associated with social degradation. A more recent practice is the reverse of this - the payment of token contributions to underline that benefit is as of right.

On the other hand strict adherence to the principles of insurance prevented the solution of several of the more difficult problems connected with relief. For example, the insurance principle requires payment of contributions over a long period of time, but this will not provide assistance to those old people who have reached the pension age before the scheme has been sufficiently long in operation. This is one feature which led to the acceptance in Canada of a flat rate pension.[80]

The second point at which the insurance principle has been abandoned is the idea of strict individual equity. This has happened through the growth of a desire to use the programme as a major instrument for solving the problem of income security. A strict actuarial relationship between contribution and payments means that the lowest benefits go to the lowest paid, who are usually the least secure. A further example of this departure from theoretical principles occurs in the practice of upward revision of cash benefits after their amount has been determined. For example, pensions may be increased or

decreased according to changes in the cost of living. This flexibility is perhaps the greatest advantage of public over private insurance.

Thirdly, the attempt to retain a relationship between benefits and contributions by providing a sliding scale of increments according to the number of contributions paid has run unto difficulties, since if the benefit is to be sufficiently high to pay late entrants a reasonable pension, the amount paid to contributors of long standing is likely to be far higher than society considers sufficient for the solution of the problems of old age. If the same formula is used in the computation of survivors' pensions, as is often the case in unified systems, the young widow who is in the greatest need of an adequate benefit will receive the lesser amount since her late husband will be unlikely to have contributed over a long period.

704. D) Benefits related to previous earnings.

We have seen how the system of relation to previous earnings tends to be in contrast to or developed from the principle of relating benefits to contributions on the insurance basis. There are certain advantages of the earnings method; for example, where the area covered by a social security system is large and diverse, the differences in standard of living between one region and another can be discounted by relating benefits to previous earnings. Without the aid of this principle, a benefit which is barely adequate in a high standard area may be above average wage rates in a low standard area.

It must be admitted that the most compelling reasons in favour of a relationship between wage and benefit are often political. In a country like the United States where the reliability of administrative decision making is not accepted by the general public, some such system may be essential to ensure that the level of benefits does not become a political football. In European countries, on the other hand, where the influence of political lobbies is less to be feared, this political consideration is less compelling.

In practice this principle in its pure form has met with many modifications. We have already mentioned one such modification, namely by weighting the benefits in favour of the lowest wage earners. A second technique is the creation of a fixed rate minimum benefit, and a third, the granting of separate dependants benefit.

A serious disadvantage of the relation of benefits to previous earnings lies in the administrative complexity of the records necessary for the efficient working of the system though modern electronic business methods have lightened this burden. There is a further difficulty that however efficient and low cost a system is, it must still rely on the information furnished by employers and employees. In some countries, therefore, it has only been applied in large concerns having a steady employment rate with little casual labour. It is clear, however, that a state which applies this system will have great difficulties in any attempt to extend the system, and therefore it would appear

that any slightly developed state wishing to introduce social security should avoid this system. It is clear that this method has also a tendency to discourage mobility of labour and it further runs into difficulties over the inclusion of independent workers.

705. Effect of Cost of Living on Benefit Rates.

We may now turn to consider the effect of price changes on benefits. Most of the experience on this subject has arisen from the problem of rising prices, and most of the problems arise in respect of benefits related to contributions or to previous earnings rather than flat rate payments. Naturally the impact of the problem is felt at its greatest in the case of long term benefits where the relevant earnings cover a long period. In general it is true to say that the short term benefits are not susceptible to charges of unfairness in regard to changes in the value of money.

In regard to long term benefits, not only is there a likelihood that benefits will not represent the purchasing power of the earnings on which they are based, but also once a payment is commenced changes in the value of money may affect the justice of that payment. In the latter respect, of course, the problem is the same as that which faces the flat rate benefits, as seems best soluble by the constant watch of the administrative authorities on the cost of living and their preparedness to authorize an increase in the benefit to match any increase.

Benefits related to wages also run into several other

kinds of difficulty. Some schemes of this nature contain a maximum benefit which can be paid, or a maximum salary which can be taken into account during the computations. A change of real values may make nonsense of these figures and cause substantial injustice. These limits are often imposed to enable persons at the level of benefit to receive slightly more than their contribution or than the average percentage without increasing the cost of the scheme. It is clear that rising prices may turn the scheme into the equivalent of a flat rate benefit and the percentage of previous earnings will drop.

The same problem of keeping pace with the changes in the cost of living applies to the flat rate principle. Possibly the most satisfactory solution is to write a cost of living clause into the legislation so that automatic adjustments may be made. This is the case in Sweden. Living costs are computed quarterly and if they have risen by more than 5 points, an automatic increase is made. One difficulty here is that the costs of the scheme are increased by this means, but there is no corresponding increase in income. Where the automatic adjustments are tuned to maxima of contributions and benefit, this problem is circumvented.

However, the most difficult of these problems are avoided by the adoption of the benefit rates proposed in this discussion. The payment of a subsistence rate benefit can be easily adjusted according to changes in the cost of subsistence and does not need careful records to be kept of

previous contributions or earnings. Short term benefits, which are to be geared to previous earnings, need only a recent record of earnings and, if the system of earnings classes is used for administrative convenience, then such benefits can be paid without any record system other than that used for normal taxation purposes. The Long Term benefit linked to an estimate of future earnings which has been discussed under the heading of Employment Injury does not require a record of actual earnings except as a basis on which to estimate the capital value of the injury.

706. Cash versus Kind.

The next problem which it is appropriate to discuss is the question whether benefits which represent the reimbursement of expenses should be paid in kind or whether any cash payment may be made for part or all.

The issue of cash versus kind has caused a considerable amount of discussion. For example it has come to be accepted that in certain circumstances the interests of the beneficiary are often best served by payment in kind rather than in cash. Thus the payment of family allowances does not ensure that the child receive the benefit of the payment, whereas if the benefit takes the form of free school meals or free milk it can be ascertained that at least a portion of the expenditure has been for the child's benefit. We say "a portion", because the provision of a meal relieves the parents of this responsibility and the money thereby saved may not necessarily be spent on the child. In many countries, it has been recognised that in

the case of the infirm aged, institutional care may be the most satisfactory manner in which to provide assistance. Thus in Great Britain local authorities provide institutional care for old age pensioners and are reimbursed by the aged person, but such charge must be below the level of the pension, thereby leaving the pensioner with some spending money and emphasizing the voluntary character of the institution.

This problem also arises where a state medical service is contemplated. In such a case, the choice must be made between some form of cash indemnity system and the provision of medical care through a direct public service. Where the form of a cash payment is chosen, this may differ somewhat from the usual form of cash benefit in social security in that the amount of the payment depends on the cost of the medical attention and also because the payment may be made direct to the medical authorities rather than to the patient. In some systems, however, only a proportion of the bill may be paid, or a flat rate may be paid for the type of illness suffered. These systems are clearly different in conception from a public health service.

A further sphere into which the issue arises is that of long term unemployment. Here it has been argued that the interests of the community are better served by the provision of work opportunity rather than by a cash payment. The most convincing basis of this argument lies in the fact that idleness is clearly a debasing experience and reduces efficiency during a subsequent period of employment. This

is especially true in a society where social value is placed on the ability to obtain employment and economic independence. Accordingly in many countries considerable effort was spent on the development of public works programmes during the depression of the 1930s.

707. International Practice.

When the problem of rates of benefit was tackled during the preparations for the 1952 Convention, the discussions were concerned with perhaps the greatest loophole in the existing international conventions which had been signed up to that date. The ineffectiveness of this earlier international legislation is thought by many to have been due to the lack of provisions relating to the rate of benefit. The problem was therefore to create a working mechanism for a minimum standard rather than to consider the objectives at which social security should aim.

We find, therefore, a somewhat different approach in the preliminary discussions before the 1952 Convention, though glimmerings of the general principles we have discussed can be seen. The International Labour Office in its preliminary survey first discussed the two main principles found in existing national schemes which have been previously outlined in the present discussion, the previous earnings principle and the subsistence principle. The Office's views may be summarised as follows:-

The advantages of the earnings principle were felt to be that workers were encouraged to attain a higher standard

of living by their industry and resourcefulness. Usually long term benefits were set at a lower rate than those of a short term, since presumably account is taken of the fact that expenses involved in gainful activity are eliminated. The Office thought from its experience that it is possible to standardize short term benefits, but that long term benefits tend to vary according to whether the invalidity is the result of employment injury or not. The theoretical basis of this idea has been outlined earlier in this discussion.

The Office felt that limitation of funds at the present time places some need for modification of these general principles. One method is to disregard any excess of earnings over those supporting a reasonable standard of living, the latter of course depending on the general stage of development of the country. Sometimes, also, an absolute minimum benefit is fixed below which the payment of benefit is not allowed to fall. The effects of a family allowance scheme on this position are to be noted, since the result is to increase the proportion of previous income received by the worker during the contingency. On the other hand, where the family allowance is also proportional to earnings, the ratio of benefits to earnings remains constant.

The countries which have had the most experience in the application of this principle are France, Netherlands and Czechoslovakia. France pays a benefit of 50% of

earnings subject to a ceiling, plus 20% of the basic wage as childrens allowance (for 2 children, for example) plus 40% if there is only one employed breadwinner in the family. Where the invalidity is due to employment injury, there may be a further addition, raising the initial 50% to 58%. If the family allowances are then taken into account, thus placing the beneficiary in a more favourable position, the proportion of previous income will rise to 72.4% in a case of employment injury. Similar calculations in the Netherlands show that short term benefits vary from 70% to 80% of basic earnings, whereas in a long term contingency the range is considerably larger, varying from 43% to 75% for a worker with a wife and two children. In Czechoslovakia, short term benefits carry a rate of 70% for the "standard family", whereas long term benefits vary from 47% to 72%.

If a comparison is made with certain countries which have only recently introduced social security, it will be noticed that benefit rates are not necessarily at a lower level, though family allowances and unemployment insurance are not covered and invalidity insurance is not always provided. Thus the Dominican Republic pays a basic rate of 50% under those branches where it does provide coverage for employment injury and similar rates for other contingencies. In Mexico and India the average rate of benefit paid is also around the 50% mark, though for some contingencies it rises higher.

To summarise this position, it can be seen from the practical schemes whichare in operation that the variation in advanced countries for the standard beneficiary having a

wife and two children is as follows: 43% - 60% for invalidity; 40% - 72% for old age; 73% - 100% for invalidity due to employment injury. In the newer schemes, the range is as follows: 40% - 50% for sickness; 34% - 45% for invalidity; 64% - 70% for old age pensions; 50% - 67% for employment injury.

The ILO then turned to an examination of the second main principle on which it considered security scheme benefit rates have been based - the principle of the subsistence benefit. This method was thought to be based on the general standard of living in each country and to reflect the differences between advanced and interim schemes. In the UK, the level of benefits paid is relatively low, the deficit between this level and the subsistence level being made up in cases of need by social assistance payments. In New Zealand rates are considerably higher, but benefits are paid subject to a means test. Sweden pays old age pensions to all residents, but supplements in respect of dependents are subject to reduction on account of property and income in excess of prescribed amounts. In Norway, the old age pension depends on the cost of subsistence at the beneficiary's place of residence, but is reduced by income in excess of a prescribed amount. In Finland, the general pension is proportionate to contributions, but supplementary allowances varying with the cost of living are granted subject to a means test.

The ratio suggested by the ILO was 50% for short term benefits and 40% for long term benefits, the corresponding

benefits under the advanced standard being 70% and 60%. These figures may at first glance appear to represent in regard to the advanced standard a departure from the original objective that the advanced standard should be an ideal system, and to replace this by a higher minimum standard. This however is erroneous, the percentages having been fixed to take into account the necessity of not impairing the will to resume work and, as regards long term biological contingencies, the presumable deduction of expenses resulting upon retirement from gainful occupation as well as the existing rates of payment of advanced systems. No consideration is made in regard to the advanced standard of limitation of funds or the level of national standards of living as has been done in the minimum standard.

If we then examine the practical results of the second principle, we find that the suggested ratio should be between benefit and the earnings of an ordinary standard labourer. The reason for the substitution of the unskilled worker for the skilled worker used in the previous formula lies in the fact that in the first scheme these earnings were merely used to provide a maximum rate, whereas in this case a minimum rate is presented. We may observe at this point that the difference between the two is not always as large as might be supposed. Figures computed in 1950 give the percentage rate of unskilled wages in comparison with skilled as 92% in Sweden and Norway, dropping to 59% in Chile and 48% in the Phillipines. During the last 6 years it might be supposed in the industrial western countries this percentage has increased,

since there has been a tendency in giving wage increases by reference to the increase in the cost of living, instead of as a percentage increase over previous earnings. The same ratios may be applied in this case as in the previous discussion, since the same considerations as to preserving the will to work and reducing the percentage for the minimum standard are clearly relevant. One result of this system is that the benefit may have to be adapted at intervals to accord with the changes wrought in the formula by the rise or fall of the average unskilled wage.

Under these formulae it appears, for example, that France has reached the advanced standard as regards sickness benefit and the United Kingdom had only reached minimum standard.

708. National reactions to the rate of benefit proposals.

These opinions were circulated to the member governments of the ILO: the replies received show that about half the responding governments accept the principle of allowing two methods of computing benefits. Some governments preferred to adopt only one standard, but others thought that short term earnings should be related to earnings, though long term need only meet the needs of subsistence. A further suggestion was to combine the two principles, making benefits a function of individual earnings, but guaranteeing the means necessary for subsistence. If this were adopted, the range of original wages which would completely accord to the first principle would be that part which lay between the standard unskilled wage and the

standard skilled wage, which as we have seen is often a minute range. In addition this method runs into all the criticisms which we have referred to in respect of each of these principles separately. The two principles were therefore retained, though they were expressed through three formulae. Of the many reservations made on these two principles, it was suggested that instead of relating benefits to previous wages, they be related to the average earnings in the beneficiary's trade or where there are wage classes to the prescribed wage for that class.

The advantage of these arguments from a point of view of administrative convenience is clear. There was also considerable criticism of the standard skilled wage principle as setting the level of earnings to be disregarded under the first principle, since this was thought to be geared only to schemes protecting employees, and in its place was suggested a rate based on the minimum wage payable in the industry covered by each part of the scheme, or alternatively a maximum flat rate or a fixed percentage, as 75% or 80% of the customary wage of the persons protected. These criticisms were also made of the method of calculation of the standard unskilled wage used under the second principle, particularly so on the grounds that the wage in question may only be at the approximate subsistence level, so that any percentage of it would be below that level. Provision was therefore made for changes in accordance with the changes in the cost of living. In order to accommodate States which would have difficulty in maintaining these

standards, a third standard was introduced, that of providing subsistence benefits irrespective of the level or earnings. Some detailed alterations were also made, mainly allowing the standard unskilled wage to be replaced by the basic earnings of the class to which the beneficiary belongs. On the other hand, the definition of the standard earnings as the average earnings of the group protected has not been accepted, since in slightly developed countries the differences between skilled and unskilled wages are very great and therefore average earnings would be far too high a basis for the calculation of benefits under the minimum standard. Other minor alterations included the requirement that the worker chosen to represent the standard should be regarded as typical of a major group which should be one of the groups of the list accepted by the Economic and Social council of the United Nations. This criterion was also altered from the branch employing the largest number of persons protected by the scheme to a definition which would include persons gainfully occupied. A further alternative allows the choice of the branch to be made on a regional basis.

The percentages proposed in the earlier report for the calculation of benefits was accepted by the vast majority of governments. The main comments were the suggestion that subsistence benefits should be calculated with reference to the cost of living, rather than to the level of earnings. It was also suggested that benefits should not exceed actual loss of earnings. Account was

taken of the suggestion that for old age the standard beneficiary should be defined as a male beneficiary with a dependent wife of pensionable age, so that the earnings of a wife who is not of pensionable age would be brought into consideration. It was understood that the benefits for single persons and families other than of standard consistency should receive a proportionate rate of payment, if more than one rate is payable.

These matters were again considered at the 34th Session of the Conference, though not in detail. The principles adopted envisages three alternative methods which in outline are similar to those previously discussed. It is interesting to note that the employers opposed the third alternative, since they thought it did not give sufficient protection to employees, and certainly could not be considered equivalent in weight to the other two alternatives. The main discussion at the Conference Committee, however, on this aspect of the proposed Convention took place over the percentages of the previous earnings or standard unskilled wage which were to be fixed. After a considerable debate the percentages were lowered to 40% for short term and 30% for long term benefits by a majority of 49 votes to 46 with 6 abstentions. The Conference Committee also discussed the method of relating benefits to changes in the cost of living and favoured a relation to the general level of wages where the latter reflects substantial changes in the cost of living.

The question of adjustment of benefits to the cost of living which had been mentioned in the questionnaire found

agreement among the majority of States. Here again it was thought that benefits should be geared to the cost of living, rather than to current wage rates; a further suggestion to leave the exact method to the state concerned was incorporated in the proposed convention. It can also be observed that this very conception is essential to the third alternative provided, that of paying a subsistence rate of benefit.

An important suggestion made by one government provided that these benefits should be payable at the time of ratification. Since however many of the schemes under consideration are of recent birth, and long term benefits will not come into operation at the full rates for some time. It therefore seems that this suggestion would be unreasonable at this stage, since these rates are meant to represent the minimum rates payable for persons who fulfil the requirements. It was therefore proposed to omit the reference to normal benefits at this point and to place a chapter on conditions for right to benefit before the chapters dealing with benefits and to state therein that benefit should be provided to persons fulfilling the qualifications described in the convention.

To enable states to comply with the requirements in respect of a social assistance scheme, a new clause was inserted providing for a reduction inthe benefit where the protected person's income exceeds a prescribed substantial amount without exceeding the amount which excludes him altogether from title to benefit.

709. Advanced Standard.

The member governments were also asked for their views about the advanced standard for rates of benefit. It is interesting, however, that no clear distinction seemed to be present in the minds of the governments in that they very largely repeated the observations made in respect of the minimum standard, since the advanced standards were in effect a raising of the proportion required to be attained. One fresh suggestion was that there should be no ceiling in respect of the advanced standard. Three governments have differing views on the two standards. Thus where the previous earnings principle was preferred for the minimum standard, Brazil suggested that the subsistence standard should be admitted for the advanced standard, but should be related to legal minimum wages. A second view, while admitting both under the minimum standard, would not countenance the former under the advanced standard. The third view would give preference to the subsistence view for the minimum standard, but would admit both for the advanced standard. Several governments felt that if the first standard was accepted there should be a minimum benefit level fixed. It was also pointed out that there is no necessary relationship, as far as the second alternative is concerned, between an unskilled worker's wage and a minimum subsistence level, though it can be answered that from experience the former is a somewhat higher standard than the latter. In any case this standard is not intended to be equal to the subsistence level, which is the object of the newly added third alternative.

The percentages suggested were accepted by one half of the governments replying. The other governments, however, were not agreed to the changes to be made so that the original proposals were allowed to stand. The proposals on adjustment to the cost of living were assimilated to those in respect of the minimum standard.

710. Formula for computing benefit rate.

It would be wise at this stage to explain in detail the exact mechanism put forward in the convention for the regulation of benefit. It will be remembered that the preliminary text allowed three methods of complying with the Convention in this respect. The two outlined in Articles 63 and 64 would be applicable to insurance schemes enforcing a means test. The first two Articles apply where the scope of protection includes classes of the economically active constituting no less than 20% of residents or 50% of employees or under the temporary reduction 50% of employees in establishments employing 20 persons or more.

The wording of these Articles is complicated in the extreme. Article 63 may be summarised as follows: Subclause 1) requires the percentage calculated by dividing the amount of benefit by previous earnings measured over a prescribed period to attain the specified rate for the standard beneficiary. Under Subclause 2) rates for calculation allow a) previous earnings to be reduced into a number of classes for administrative convenience, b) family allowances to be included in both sides of the fraction (if so paid) and require c) the same time-base to be

used in both sides. Subclause 3) also allows any excess of previous earnings over the average skilled wage to be disregarded. The latter is to be calculated by reference to the typical skilled worker in the major employment group (according to the ECOSOC classification) with the largest number of economically active persons protected for the contingency concerned. Subclause 4) requires current benefits to be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

The lack of clarity in the reference in subclause 1) to a prescribed period caused Germany to request an assurance that this period could extend to the whole period of insurance taken into account for establishing title to benefit. Norway also points to the lack of clarity in A.63 (2) (a) which could allow so wide a range of classes as to bring the benefit in some cases substantially below the percentage of the actual wage: and secondly, that the highest basic earnings could be kept lower than the standard skilled wage. The Office, however, though recognizing the possibility of abuse, felt that in practice wage classes were usually of reasonable dimensions: it recognized that some difficulty might be experienced where a maximum limit might be fixed in the highest wage class, but the benefit paid to a member of such a class would have to equal the percentage of the standard skilled wage. The preliminary text however did not make this clear, since it stated that any excess of previous earnings over the standard skilled wage could be disregarded, instead of making clear that the

benefit should never be less than the prescribed percentage of the standard skilled wage. The importance of this change is apparent when the payment of family allowances is taken into account. It may, therefore, in some circumstances be necessary for the maximum on earnings to be higher than the standard skilled wage. Where the percentage of earnings granted by way of benefit under the national laws exceeds the percentage stipulated in the draft Convention, the maximum benefit may obviously be less than the national percentage of the standard wage.

The rephrasing of this Article (renumbered as A.60) makes clear the relation of family allowances in this calculation, and redefines the maximum earnings rule in the light of the discussion previously outlined. In addition it was stated that for beneficiaries other than the standard, the benefit shall bear a reasonable relation to the benefit paid to the standard beneficiary.

The method for the calculation of the standard skilled wage drew also some criticism. Germany suggested, as an alternative to the use of the ECOSOC classification, the naming of a specific class important in all States. The UK also felt that the suggested method caused considerable administrative difficulties. Norway also pointed out difficulties in a country where there were wide regional variations, particularly between agricultural and industrial regions. The Office therefore thought it wise to insert a second criterion, namely, the wages of 1) fitters and turners 2) or unskilled labourers in the manufacture of

machinery other than electrical machinery. By Subclause 8) of new Article 60 the standard skilled employee may be determined separately for each region, (though the Office commentary makes this applicable where rates of benefit very between regions, a median figure being otherwise taken). Subclause 9) also provides that standard wages rather than overtime earnings should be the basis of the calculation.

Article 64 was constructed on similar lines, requiring benefit divided by the earnings of an adult male labourer to equal the prescribed percentage, the ECOSOC categories being applied as before. Germany proposed that adaption to changes in the cost of living should not be required for current short term benefits based on earnings in the 26 weeks preceding the contingency. Article 64 has been similarly rephrased (and renumbered as A.61) on the lines discussed in relation to new A.60.

Article 65, dealing with social assistance benefits required a) that the rate of benefit would be determined according to a scale fixed by the competent public authority b) that such rate should be reduced only to the extent by which the other means of the family exceed a substantial amount fixed by the public authority c) that the total benefit and the other means should be sufficient to maintain the family of the beneficiary in health and decency and not less than the benefit calculated under Article 64.

Norway pointed out problems here which might arise from regional variations though the changes already discussed

seem to solve this problem. The UK felt that the resources taken into account should vary with the particular circumstances of each family and an amendment was made to this effect.

By way of a schedule, the prescribed percentages were set out for each contingency. A 50% figure for a standard beneficiary with a wife and responsible for two children was set for incapacity for work, whether or not resulting from employment injury, total loss of working capacity or faculty resulting from employment injury, and (where the standard beneficiary is a woman) maternity. 40% was fixed for the same standard beneficiary for unemployment and invalidity: (for a man with wife of pensionable age) for old age: (for a widow responsible for 2 children) for death of the breadwinner from employment injury: 30% was fixed for the latter contingency where death was not due to employment injury.

These figures represented an increase over the figures agreed by the 1951 Conference. The Scandinavian countries which had generally developed schemes of national scope felt that this increase penalized them in comparison with schemes of more restricted scope. Other nations wished to alter the percentages suggested for certain contingencies. The Office however felt the percentages reasonable, particularly in view of the fact that the permissive qualifying period had been increased from 5 to 15 years. An Austrian suggestion to allow a reduction of sickness cash benefit during hospitalization was adopted.

These Articles, however, caused considerable difficulty

and discussions. In reply to a query from Switzerland and Norway, the Office pointed out that A.64 could be complied with by the payment of proportional benefits if the minimum benefit so payable to any standard beneficiary was equal to the stipulated percentage of the standard unskilled wage. On the other hand, if A.63 were applied, a benefit equal to the stipulated percentage of previous earnings would have to be paid (however low or high those earnings might have been) subject to a permissible maximum benefit not less than the stipulated percentage of the standard skilled wage. Under the example quoted by the Office in its reply, if A.63 was chosen for sickness insurance, the standard rate could vary from 50% of the previous earnings of the lowest paid insured to 50% of the standard skilled wage: whereas if A.64 were chosen the lowest paid insured worker could not receive less than 50% of the standard unskilled wage, however high the benefit received by the highest paid worker. Thus a State granting 50% of individual earnings subject to a minimum of 50% of the unskilled wage would be able to comply with A.64. This is not less onerous than A.63 unless there is a national minimum wage which is taken as the standard labourer's wage and the basis for computing the minimum benefit.

711. Rate of benefit for family allowances.

Family Allowances, owing to their special position, are in a somewhat different position as far as rates of

benefit are concerned and in the pre-1952 discussions are accordingly separately treated.

Since general family benefits are intended to assist in defraying family charges, they naturally are payable in proportion to the size of the family, rather than to the individuals earnings. Some states assume that normal earnings are sufficient to defray the expenses of one child - or even more - but many states pay these allowances for the first child. In some states rates rise with the number of children, or with the age of each child. In France the allowance is a prescribed percentage of the wage of a particular category of unskilled workers, which is adjusted to the general level of wages in the different regions.

It is interesting to compare the percentage of the average earnings of a breadwinner with a dependent wife and two children which family allowances represent in the different countries. These figures calculated for 1950 were as follows: France covers 61% of her population, paying to the standard beneficiary 52% of the average wage, provided there is only one breadwinner, otherwise 17%. New Zealand covers 100% of the population, paying 15%. In Czechoslovakia the figures are 29% and 15%: in Uruguay a small fraction of the population (urban employees) 12%: in Sweden 100% and 8%: in Canada 100% and 7%: in the UK 100% and 4%:: in the Netherlands 27% and 12%.

It is interesting to compare these benefits to the wage of an unskilled labourer. Here the appropriate figures would be: France (wife dependent) 20%: Canada 10%:

Netherlands 12%: Sweden 9%: UK 5%: From this it will be seen that the figures will be slightly higher where the standard of comparison is the unskilled wage. The low figure for the United Kingdom in regard to the standard family is due to the fact that the first child is not covered; thus the percentage for a larger than standard family will be somewhat higher. This is similar to the position in France, though the sole breadwinner's allowance is of considerable value.

The conclusions drawn from this survey were that benefits should be expressed as a percentage of the current earnings of an ordinary unskilled male labourer in the standard branch of employment (as previously defined). For the minimum standard it was thought that this percentage should be 5% in respect of every child other than the first. For the advanced standard every child should be covered by the benefit which should be raised to 10%. Benefits in kind may be admitted wholly or partly as an alternative to cash benefits, though problems arise as to the best method to ensure the equality of measurement, particularly in a scheme which is limited in application.

In their replies to these suggestions, all but two of the governments were in favour of the inclusion of family allowances in the proposed convention, though different suggestions were made as to the details. For example it was suggested that family income should be taken into account, and on the other hand that an option as to the payment of proportional or flat rate benefits should be

allowed. In view of these replies certain modifications were made in the formula originally adopted. For the purpose of calculating the 5% rate, the total benefit paid in respect of all dependent children may be divided by the number of children other than the first. The importance of family income was acknowledged by the specification that the rates prescribed shall be payable to a beneficiary having a dependent wife. An alternative formula was also provided to allow ratification on the basis of allowances securing to the family the means for subsistence, adaption being made to meet substantial changes in the cost of living. The means test is adapted to the particular nature of this contingency, which, as we have said, does not involve loss of income, but rather the increase in responsibilities. Thus reduction may only be made where the total of the beneficiaries means and the benefit would exceed a limit varying with the number of eligible children. All but four of the governments replying think benefits in kind a suitable substitute for benefits in cash, some having a preference for them, but others limiting them to one half of the total. The items considered suitable for benefits in kind include food, clothing, housing or rent concessions, free holidays, domestic help and teaching materials. These items were accepted with the exception of teaching materials which were the concern of the education authority; though their inclusion was logically correct, they fall for administration under a different category of social service.

On consideration of the proposals for the advanced standard, though the majority accepted the necessity for an advanced standard, only half accepted the particular method suggested. Those countries wishing to increase their birth rate suggest an increasing percentage rate as the number of children increases. Brazil suggested the rate should be in inverse proportion to income. For this standard, Austria feels that benefits in kind should only be a supplement and not a substitute for benefits in cash, but Brazil wishes to provide benefits in kind in place of cash benefits. Further it was suggested that benefits be geared to subsistence levels, rather than to standard earnings. The ILO having considered these suggestions felt that the same principles should be adopted as for the minimum standard, with an increase in percentage as previously suggested.

When this matter was considered by the Conference Committee of the 34th session of the ILO, it was agreed not to consider the alternative by which provision of the means necessary for subsistence of the second or subsequent dependent children would be provided. The committee also rejected a proposal to fix a series of decreasing percentages and to establish a maximum limit for the allowances to be paid to any family. The Committee also felt that benefits should normally be provided in the form of cash benefits, though account might be taken of benefits in kind provided.

712. Draft Articles on family allowances.

After these points of view have been considered, the

draft Convention was further considered, Articles 41 to 43 being concerned with the benefit rate for family allowances. The first set a rate for the second and further children of 5% of the earnings of an unskilled worker (determined in Article 64). This rate could be calculated by dividing the total amount of the benefits payable for all children by the number of such in excess of one: both benefit and earnings to be calculated on the same time basis.

Canada objected to the formula for taking into account benefits paid in respect of the first child in families of more than one child, feeling that benefits paid to an only child should also be considered. Certainly the proposed formula could not require the calculation of a rate for every family, so that it would be taken to mean that for no child should the rate be less than 5%. If allowances paid for the first child in families of 2 or more were to be considered, this might have required an investigation into the number of such families. This provision was therefore omitted in favour of an amendment to the provisions as to payment in kind. This provided that the total value of payments in cash and kind must be an amount which divided by the total number of children of all residents attains 3% of the wage of an ordinary adult labourer determined under Article 64.

On the subject of payment in kind, Germany thought that this would make verification difficult and might lead to abuse. Poland would allow payments in kind up to 50% of the value of cash allowances. Canada would allow medical

care for children to be counted where there had been no ratification of parts II and VIII: Norway would count tax exemptions in respect of children. Norway also pointed out the difficulties of computing the value of benefits provided in kind. The New formula therefore allows calculation to be made in respect of the total provided and the total number of children.

Chapter 8.

801. Duration of Benefits: General Considerations.

The discussion of this last of the major theoretical problems arising from the payment of social security benefits - namely the duration for which benefits are to be paid - occupies a special position for this reason: whereas the other main problems are equally relevant to both a consideration of theoretical principles and a discussion of practical measures, the problem of the duration of benefits is relevant only to practical measures.

As we have seen in discussing the definition of the various contingencies in theory there should be no limit on the length of time for which the benefit is paid, since the aim of social security is to recompense "undeserved" imbalance of income and expenditure. In some cases, of course, discontinuance of benefit occurs under the very definition of the contingency. Thus, where sickness is cured, benefit ends: if, after a period of time, it has not been cured, it gives way to invalidity. Subject, therefore, to such considerations, and subject to due safeguards to prevent abuse, we may say that there should be no limitation of duration.

The 1952 Convention, however, was concerned with minimum standards rather than with an ideal social security system and the preliminary discussions, therefore, sought to find a reasonable duration of benefit which would alleviate most of the distress and yet would not be too great a financial burden on a developing economy. In the

preliminary observations, a distinction was made between the duration of medical benefits and of cash benefits which it is convenient to follow.

802. I. Duration of Medical Benefits.

In its survey of existing medical care schemes, the International Labour Office felt that under a public medical service, protecting all residents, time limits for treatment were impracticable, not only for reasons of health preservation, but also because of the administrative difficulties involved and in slightly developed countries the inability of the individual to consult a private doctor even if he had the financial means. It was therefore suggested that the convention should not allow a time limit to be imposed. In their replies to this survey, the vast majority of governments accepted the suggested provisions. One amendment was made, stressing the importance of restoring the patient's ability to perform a useful function. The second branch, providing medical benefits in case of sickness and sickness allowances met some opposition from governments who wished to extend the limit of duration, or to make no distinction as to dependents. The ILO therefore proposed two amendments, the first requiring a longer duration for diseases known to entail prolonged treatment and the second allowing a temporary reduction for slightly developed countries. These figures were suggested at 52 and 13 weeks. Further the distinction between the employee and his dependents was dropped, since the more advanced countries no longer make this distinction.

Where medical care is necessary owing to employment injury, it is common to supply full medical services until the contingency is ended, since this is regarded as a joint responsibility of the employer and the community. The pre-war conventions, though allowing a limitation on the duration of sickness benefits, made no such permissible limitation in the case of employment injury.[81]

The majority of governments agreed to this since it was recognised that the standard required under this branch could afford to be higher since the scope of the branch was lower than that of many of the other branches, an opinion which clearly shows the desire to restrict the financial cost. The medical benefit for this contingency can be provided by sickness benefit, provided that the range and duration are not limited. A separate branch covering maternity was also accepted by a majority, though there was some argument that a period of maximum duration should be fixed.

It is noticeable during this discussion that Argentina and Brazil and certain of the other Latin American countries urged the extension of the time limit or its complete abolition, whereas Ceylon and Pakistan felt it impossible to accept any definite standard at the present time.

When the draft Convention was prepared, A.12 provided that the duration may be limited to a) 26 weeks in each case, unless the condition is recognised as entailing prolonged care, in which case the limit is to be 52 weeks though the benefit may not be suspended while a periodical payment continues in respect of incapacity for work, or

b) where there is a temporary exception, to 13 weeks in each case.

As to the maximum benefit period, some objections were raised as to the minimum length of the period, and particularly in connection with the extension for certain conditions. France, for example, pointed out that the original extension was to curable diseases, but the Office thought that this distinction created too difficult and unjustifiable distinctions, particularly in respect to cancer. An examination of the figures, however, showed that this extension to 52 weeks was too inflexible, though a large number of countries made some extensions in the case of specified conditions and diseases. It was therefore suggested that the text be amended to leave to national laws the exact limits of the extension to be allowed, whether by authorizing the agencies administering medical benefits to make such extension or to make provision for such extra care through some other Agency. The Netherlands on the other hand put forward the suggestion that where a country provides a much larger range of medical care than is required by the proposed text, it should be allowed to have a shorter maximum benefit period for hospital care, provided that an extension of such period can be secured by voluntary insurance.

803. II. Duration of Cash benefits: A) Long Term.

We must now turn to a consideration of the problem of the duration of cash benefits. In theory, as we have argued, the benefits being once paid should continue until

the finish of the contingency they were intended to cover. In practice, however, some form of restriction has to be applied in order to reduce the number and difficulty of administrative decisions which might have to be made. It is found easier to apply this principle in cases where long term benefits are paid, since generally the existence of such needs is more easily verifiable. This is the case in many of the countries supplying this type of benefit, though some countries impose a maximum amount which can be paid to any one beneficiary.

In the case of invalidity benefits, difficulties may arise where a partial recovery of earning capacity has occurred under a scheme which compensates only total incapacity or at least 2/3 incapacity, so that a slight recovery of faculties may deprive of benefit completely.

For old age pensions, the theoretical principle on which they should be paid is the incapacity of the individual to earn a full wage. In some countries limitation of cost is achieved by actual retirement from work being required as a condition of payment. This allows some approximation to the theoretical position, but in practice much disliked by the beneficiaries, and may run counter to general employment policy by causing the withdrawal of those above retiring age from employment.

In the event of death of the breadwinner, the need to be satisfied is the need of support or the presumed need. Some laws therefore provide that the child must be dependent and not in gainful employment; in the same way the widow must under these laws be invalid or must have

attained old age; sometimes it is necessary that the widow have dependent children or have attained an age at which it would be difficult to find work. A variation of the latter requirement allows a temporary benefit to be paid until such time as the widow can be presumed to have found work. It is clear that the length of these periods must depend to some extent on the general employment situation in each country. Under employment injury schemes, the criteria for defining need are generally far less strict and normally benefits are paid until the children leave school and the widow dies or remarries.

These principles were considered by the governments who replied to the questionnaire. Some difficulty arose from the fact that at that stage the contingencies had not been precisely defined, particularly in the case of protection against need arising from death of a bread-winner, since in this case some measure of restriction is necessary or advisable in respect of the age at which children are deemed to cease being dependent, or at which the widow is deemed too old to be likely to find employment, though the latter is much subject to the fluctuation of the state of the employment market, as we have seen earlier in this discussion. Report IV (2) says of this[82]

"a young widow may well be able to maintain herself by work, once her children have been reared, in a country with full employment and a tradition of womens work, whereas in another country when women rarely go into employment she might need a pension".

Suggestions were made that the pension be commuted for

a lump sum payment, but the ILO took serious objection to the admitting of this alternative. The earlier conventions of 1925 allowed the provision of a lump sum where the social security institution was satisfied that the sum would be properly used. The ILO felt however that the advance of social security systems made it possible to withdraw this possibility, except for exceptional cases, as that of a young childless widow or the victim of an employment injury whose capacity was of a minor degree.

B) Short Term:

In the case of short term contingencies, the principle of providing support for as long as it is needed is not applied so extensively. The difficulties of preventing abuse have led to the adoption of a limitation on the period of benefit. In cases of maternity, for example, the necessity of abstention from work depends on national customs and general health conditions as well as on the condition of the mother in each particular case. The general consensus of opinion, however, seems to be that a period of 6 weeks before and 6 weeks after confinement is sufficient to maintain health provided the confinement is normal. It is perhaps most convenient to consider abnormal conditions arising from confinement under the heading sickness. If the national legislation prescribes absence from work for a longer period, then benefit should be paid during this time.

Where the incapacity for work is due to sickness, the duration of benefit raises peculiarly difficult problems.

In some schemes, the branch concerning invalidity takes over after a prescribed period of time. There is a subtle problem which may arise here from the fact that sickness benefit is normally paid for incapacity to work in the beneficiary's usual occupation and invalidity pension is granted in respect of general incapacity to work. It will be seen that this change in criterion may deprive the beneficiary of his right to benefit. In Sweden there is a temporary invalidity benefit granted pending recovery or consolidation of the condition. In the UK, sickness payment is without time limit, though incapacity must be total throughout. In the Netherlands, this temporary invalidity benefit is at a much lower rate than sickness benefit, though if it is clear that the condition is permanent, sickness benefit may be continued. The period after which the invalidity pension takes over provision of benefits seems to be approximately one year, since this initial period seems to cover the vast majority of cases of temporary incapacity to work. In Australia and New Zealand for persons of little means and in the UK for all residents who have paid 156 contributions payment is made until the condition is cured or invalidity benefit takes over. In most other countries a time limit of from 8 to 52 weeks is imposed. Thus the lower figure operates per period of 52 weeks in India; Sweden has a maximum period of two years; the mode, however, appears to be around 26 weeks. Where a state is unable for financial and social reasons to cover the whole period of sickness and must use some technique to lighten the burden, it appears from the

experience of the pre-war conventions that a combination of a maximum benefit period of 26 weeks and a waiting period of 3 days covers the majority of days of sickness. This waiting period excludes all cases of a short duration and, if the payment is not retro-active, a fraction of the benefit in each case of longer duration. Experience has shown[83] that on the assumption of a maximum benefit period of a year, a non-retroactive waiting period of 3 days reduces the amount of days lost for which benefit is paid from about 8 - 13% of the total benefit paid. A six day period showed the figure of 16 - 25%. More recent surveys in private industrial schemes have suggested that these figures should be as high as 30% and 42%. The effect of an increase in the maximum period from 26 to 32 weeks, combined with a waiting period of 3 days seems to add approximately 10% to the cost. The former combination, 26 weeks with 3 days has been estimated to cover either 78.1% or 84.9% of days lost through sickness, according to two opinions.

It can be seen from these figures that this combination of limitations usually results in about 10 days of uncompensated sickness a year. The new Indian insurance scheme set a period of 8 weeks maximum benefit per year on the assumption that the average days of benefit per person protected would be about 14. The figures for European countries suggest that this combination of limitations will provide a sickness rate approaching ten days per person per year, though where conditions are infavourable the rate will be higher.

Employment injury cases under some schemes are covered by sickness insurance, the separate insurance scheme taking over at a later date, though some schemes assign all such cases to the employment injury branch from the start. If in the former case a time limit is imposed on sickness insurance, it is normal for the invalidity pensions to be paid from the date of the time limit.

In the case of unemployment insurance, the problem is clearly different from that facing the biological contingencies. Clearly it is amenable particularly to solution by economic and social methods and need not depend solely on the payment of a monetary benefit. Many countries however limit the payment of benefit or impose a waiting period. In Bulgaria, Denmark and Switzerland the former is from 12 to 13 weeks, though it is longer in the UK, amounting to 30 or 52 weeks depending on the length of membership of the scheme. The waiting period varies from 1 day in Switzerland to 6 and 7 days in Australia and New Zealand. Sometimes the waiting period applies only once during the year: in other cases both a waiting period and a short maximum duration are combined, as in Denmark and Norway. The 1934 Convention of Unemployment Provision allowed the creation of a waiting provision but provided that the duration of payment should not normally be less than 156 working days per year, and in no case less than 78 working days (these figures represent 26 and 13 weeks respectively).[84] When these opinions were canvassed among the member governments of the ILO, approximately half of

the governments accepted the suggested standard and also a temporary exception, a further quarter accepting the former only. The Argentine government wanted to adopt for the temporary reduced standard a period of 13 weeks per year (and not per case) rather than the method of calculation previously suggested. The United States felt that the method of computation suggested for the temporary standard did not in fact mean a lower standard than the correct minimum. In the case of sickness benefit due to employment injury a further clause was added so that benefit may be paid from the 8th day of incapacity for a maximum benefit period of not less than a year, instead of being paid from the fourth day of incapacity for a maximum of 26 weeks. An alteration was also made in the latter category since the relevant pre-war conventions did not allow the application of any time limit in the event of incapacity due to employment injury and sickness allowances and invalidity pensions must clearly be linked. The new provision removes a time limit but allows a reduction of the rate to that of the invalidity pension after 26 weeks of benefit and a waiting period of 3 days.

For maternity, the suggested limitation was approved by all but one of the governments; the sole modification made was to emphasize that the payment of benefit should be conditional on abstention from work.

In the case of unemployment allowances, half the governments accepted the suggested standard. Many views were expressed, and as a compromise an alternative was inserted allowing a waiting period of seven days coupled

with a maximum benefit period of not less than 156 working days.

804. Advanced Standard.

At the same time some consideration was given to the question of advanced standards. The Office felt that no distinction need be made between the minimum and the advanced standard as regards long term contingencies in the proposed convention, since benefit is universally granted as long as the contingency lasts or is presumed to last. In regard to short term benefits, however, only the more advanced countries are in a position to pay benefit without time limit. As we have seen the limit on payment of sickness insurance must be considered together with the payment of invalidity pensions. For a lower standard we have seen that a 26 week maximum seems satisfactory but even this standard is too high for slightly developed countries. The suggested temporary lower standard therefore would allow states to ratify if their maximum duration and waiting periods result in an average of not less than ten days of compensated incapacity per person protected per year. No distinction is to be made for the minimum standard between sickness due to employment injury and other sickness, since the difference really lies in the amount and conditions of the pension paid after the termination of the sickness benefit. The minimum standard for unemployment is suggested at 78 working days per period of 12 months. In this case a waiting period of 3 days would be permitted, or alternatively a provision that benefit need not be paid during the first

nine days in the course of 12 months. No temporary exceptions from this standard were suggested. Maternity benefit would be payable for 12 weeks, unless law requires a longer period of abstention from work. The advanced standard would be reached when the benefit was paid as long as the contingency was present. When these opinions were considered by the member governments, half of the governments which replied felt that under the advanced standard benefits should be paid as long as necessary. Some states felt that a distinction should be made between long and short term benefits, feeling that the latter should still be subject to some limitation, particularly in respect of unemployment benefit. It was felt that no time limits should be set, but that the question should be linked to the description of the benefit which by defining the contingency would place some kind of limit on payment. The exception to this is the case of maternity benefit, where the length of the contingency can be formulated as 13 weeks.

805. Draft Articles on Duration.

The next step in the codifying process was consideration by the Conference Committee at the 34th session of the draft Articles. The Committee was first faced with an Employers' proposal to reduce the maximum period for sickness to 13 weeks and to lengthen the waiting period to 7 days; this was rejected but an amendment not to accept the alternative of allowing a 7 days waiting period with a maximum period of 52 weeks was accepted by

71 votes to 8 with 12 abstentions, mainly on the grounds that in terms of financial cost there was no balanced alternative in the deleted proposal. A closer vote was taken on a proposal to increase the waiting period for unemployment insurance from 3 days to 10 days where the benefit was at least 78 days in 12 months, which was rejected by 39 votes to 49 with 4 abstentions. In this case, however, the alternative of 156 days and 7 days was admitted, presumably because it was felt that, compared with sickness benefit, fewer cases of unemployment were only of a few days duration. On the question of family allowances it was suggested and accepted that allowances should be paid until children reached the school-leaving age and that this rule should apply in the case of all benefits paid to children.

In the case of sickness, A.17 allows the imposition of such a qualifying period as is deemed necessary to prevent abuse. A.18 allows a limitation of duration of 26 weeks in each case beginning with the fourth day of suspension of earnings or, where a temporary standard is accepted, to such period that the total number of days for which the benefit is granted in any year is not less than 10 times the number of persons protected in that year.

Certain criticisms were made in favour of a lengthening of the waiting period, or at least an alternative of a longer period. Canada thought that the temporary standard was hardly less stringent than the 26 week period. A study of the available data shows that in all but one of the

countries about which data was available the waiting period only exceeded three days where there was no maximum benefit period, as in Australia and New Zealand or in the lower income group of countries. Figures show that, contrary to Canada's argument that if 5% of the covered population were to claim per year, the temporary standard would require a payment of 200 benefit days to each person, the figures for claims were nearer 50% so that a relatively larger amount of benefit would be saved by the existence of a waiting period. Interesting figures provided by the Office suggest that the incidence of incapacitating sickness is 33% in Belgium, 32% in Canada, 42% in Germany (pre-war), 29% in Hungary and 26% in Scotland (measured as cases per person per year). All these countries work to the limits suggested in A.18(a). However it was suggested that the temporary exception be redrawn to allow a minimum maximum period of 13 weeks with a waiting period of not more than three days in addition to the previous draft clause. As regards the normal minimum standard, the IL Office felt itself unable to suggest a longer waiting period, since this had been rejected by the Conference Committee in connection with a 52 week maximum, though it was possible that the Conference might entertain such longer waiting period where there was no maximum benefit period. This latter possibility was inserted into the draft convention.

In the case of Unemployment protection, A.23 allows the imposition of a sufficient qualifying period to prevent abuse. A.24 allows a limitation of duration to 78 days in a period of 12 months where the benefit is not paid for the

first three days in each case of suspension of earnings or for the first nine days in a period of 12 months, or to a period of 156 days in the course of 12 months in which case benefit need not be paid for the first 7 days.

The Belgian and Polish governments wished to equate these waiting periods with those relating to sickness, particularly since in this case the pre-war convention regards 26 weeks as the normal period, and 13 weeks only as an exception. Ceylon, Germany and Norway require a longer waiting period than three days, and the Canadian government wished to relate the maximum benefit period to the contribution period. The preliminary text was therefore retained, though the Office thought that an important issue before the conference would be whether an alternative should be admitted to relate the maximum benefit period to the period of contributions. Norway and Switzerland thought that deviations from the rule should be permitted for the benefit of seasonal workers, which was accepted. The Office also thought that the reference to the maximum period in days should be replaced by 13 and 26 weeks respectively in order to prevent any difficulties as regards sickness insurance, for example. It was made clear that the proposed benefit would be paid on seven days a week at the daily rate of 1/7 of the weekly wage or on six days a week at a weekly rate of 1/6.

Chapter 9

Miscellaneous Problems:

The main problems of international social security being thus analysed, it remains to consider a number of minor problems which arise:-

901. A) Right of Appeal:

We have seen earlier in the discussion that one of the important defects of the pre-war conventions was that they did not show sufficient flexibility in their treatment of the administrative problems of the individual branches of social security, even though a comparatively large portion of these conventions is taken up by provision for administrative details. During recent years also certain trends in national practices in this field have played an important part in achieving flexibility of systems of administration. Dissimilar national conditions have led different countries to adopt alternative approaches to problems of administration and financing.

One common factor to all systems, however, is the problem of protection against administrative errors, arbitrary action or bias and there is wide agreement that such protection is only sufficient where it is guaranteed by law. The problem, therefore, was to ensure that an appeal against an administrative decision would be heard by some authority which is jurisdictionally independent of the administrative authority making the first award. Care must be taken in any international agreement to ensure that a mere request for reconsideration of the original award

is not classed as an appeal. The main difficulties in this field lie in ensuring that the appeal body is not flooded with questions of little difficulty which should be decided on a moment's consideration of the facts and in ensuring that the members of the court have a correct balance of judicial background and a familiarity with the field of social security. For example, should the Appeals body include representatives of employees and employers, if the latter make contribution to the scheme?

The existing conventions on pensions and sickness insurance specify that claimants shall be granted the right of appealing in case of disputes concerning rights of benefit or liability to insurance and that, in the case of pensions disputes, such disputes shall be referred to special tribunals which shall include judges. The Convention of Unemployment Provision likewise referred to the setting up of tribunals to deal with such disputes.

Most of the countries which have installed social security schemes have made provision for appeal, some enacting that the Appellate Tribunal is to be the central administrative authority but may providing for appeal on points of law to a judicial court. In some cases final appeal rests in the competent Minister, who is not the final administrative authority, or in special arbitration boards, or again in the appointing of state bodies, which often include representatives of insured persons. Sometimes the body in question is the regular labour Court, or special referees, umpires, or commissioners independently appointed. France, for example, has created committees of the funds

concerned for the submission of disputes, from which they are referred to commissions headed by a judge and with employer and employee representatives.

When this matter was considered by the member governments all replied that there should be a right to appeal against administrative decisions in respect of benefits. One suggestion made was that this need only be effected in the case of compulsory insurance: another that this right was clearly inappropriate for clinical matters under a medical service, though it must be remembered that in a scheme providing medical benefits for the whole population for all contingencies requiring such treatment, this problem does not arise in normal circumstances. The need in such schemes is not so much for a legal right of appeal, but a special procedure for the submission of complaints concerning the care provided. The latter seems best guaranteed under a scheme administered by a government department responsible to a legislature provided that a beneficiary has the right to submit a claim to an administrative departmentwith a guarantee of a right to appeal from its decision to the authority responsible for the administration of the scheme. Denmark further suggested that there need be no right of appeal where benefit depended on the fulfilment of exact conditions and that a distinction should be made between minor matters which should be appealable to one tribunal of appeal and more important matters where there should be a further appeal to a Court of Law. France also pointed out that although the ideal system might involve appeal to a judicial authority, it was wrong to prevent a

state from ratifying on the mere grounds that an appeal lies only to administrative bodies, since the latter may be just as impartial and objective as a judicial body.

In the questionnaire, members were asked whether the appeal authority should be a special tribunal including Judges, whether professional or not, who are specially cognizant of social security law and procedure and also whether in respect of a scheme which protects only employees and their dependents the tribunal should include representatives of employees and, if they contribute to the scheme, of employers. Four governments only accepted this suggestion entirely, though another four accepted with reservations: 14 governments failed to accept either formulae in principle. As to the first half of the formula, 15 governments agree that the appeal authority should be a special tribunal, of which 8 accepted the suggestions as to its composition. Austria felt that unemployment benefits represented a special case which would be more appropriately solved under the second half of the formula. The Netherlands thought that for a social assistance scheme, as opposed to an insurance scheme, an administrative appeal tribunal was sufficient. Argentina suggested a labour Court and Pakistan an executive tribunal, but on the other hand Italy stated that the trend was away from special Court, though suitable persons, not part of the magistracy, might be called upon to participate in ordinary sessions dealing with special subjects.

Certain further suggestions were made as to the composition of the Court. Chile felt that a permanent

Commission of technical experts would be more suitable. Ecuador and Turkey favoured judges and representatives of employers and employees, though France preferred representatives of the beneficiaries and a permanent magistrate. India points out the difficulty that slightly developed countries and countries first introducing social security will not have sufficient experienced personnel to staff such tribunals. New Zealand and the United Kingdom favour the tribunal of specially competent persons and feel that it is not necessary to include professional judges. Poland would guarantee the representation of insured persons in the tribunals but would leave other matters to be dealt with by the national legislation, the latter point being also supported by Sweden, Switzerland and the United States.

The second part of the suggested text on this matter, dealing with schemes protecting only employees was acceptable to 7 governments. Holland thought this suitable only for a social insurance scheme, and Ceylon for a scheme in which contributions are on a employer-employee basis. Denmark felt that where the appeal authority was a Court of law, both parties should be represented, though the authority need not take such a form. India felt that the Court should consist of independent judges who might invite assessors. Ecuador, the Phillipines and Turkey approved of employer-employee representation, but New Zealand did not think it essential.

In view of these opinions, it was proposed that national laws and regulations might provide for the

establishment of special tribunals and, where the persons protected constitute a well defined class of the population, for their representation therein. The Conference Committee of the 34th Session were unanimous in recognising that the benefits of social security must be given as of right which must be guaranteed by an appropriate procedure, but that the latter might equally take the form of a judicial procedure or of action by authorities superior to those taking the original decision. The original suggestions were therefore modified so that the draft convention would merely contain an obligation to guarantee a right of appeal. In the case of a public health service for the whole population administered by a government department subject to a legislature the right of appeal would be replaced by appropriate arrangements for investigating complaints about the refusal of medical care or concerning the quality of the care received.

In the draft Convention, A.66 assured the right of Appeal, though where a Government Department responsible to a Legislature is entrusted with the administration of a medical care scheme there might in its place be a right of complaint to an administrative body superior to the body making the original decision. The representation of beneficiaries on tribunals was made permissive, not obligatory.

Finland wished to extend the exception for medical care to other contingencies but the Office felt that it was only in clinical decisions that the formal appeal procedure was

inadequate. At the instigation of Denmark the clause concerning the representation of beneficiaries was replaced by a provision that no right of appeal should be required where the claim was settled by a special tribunal on which the persons protected are represented.

902. B) Financial resources:

The difficult problem of finance must be solved according to two major principles; the first that an adequate flow of income must be assured so that the costs of benefits and administration may be met; second that the burden must be distributed in an equitable and economic manner among the different groups of the population. The latter problem in particular was of importance to the proposed International Convention. Existing pre-war conventions have dealt with this matter, the Convention on Pensions and that on Sickness specify that both employees and employers shall contribute to the scheme, though the Pensions Convention permits employers' payments to be dispensed with where the scheme extends beyond employees.[84] For pension insurance a State contribution is mandatory, but under the Sickness Insurance conventions only make such a contribution optional. The Unemployment Provision Convention refers to compulsory or voluntary insurance, without specifying how either is to be financed and also to unemployment assistance. The Convention on Maternity Benefits permits them to be paid from public funds or to be provided through insurance, without specifying how the latter is to be financed.[84]

There seems to be no fixed or agreed method of finance

among the national schemes in operation. The most common single practice is that of a tri-partite allocation, contributions being provided by State employer and employee. This method is particularly widely used in the financing of pensions and health benefits and is also used, though less frequently, for unemployment insurance and rarely for employment injury insurance, though the latter is the method used in the United Kingdom. Most other schemes differ from this formula in that either the employers' or the employees' contributions are eliminated. One group of States requires state and employers' contributions for most branches: for family allowances employers sole contribution is fairly frequently used and for employment injury this method is used in the great majority of cases; it is sometimes but less frequently found in the financing of pensions or health benefits or unemployment insurance. A third pattern which is used in certain countries is based on a combination of employee payments and state subsidies. Yet other countries provide benefits entirely from public funds. These differences reflect the variety of political and social organization of different countries, traditional practices and historical development and financial arrangements.

These considerations suggest the dubious wisdom of attempting to lay down or recommend any one administrative method of financing, though it might be profitable to lay down certain basic principles which are found to be common to all systems, and which can be applied by countries

applying many different methods of financing. One important principle that must be borne in mind is that it is an essential part of the concept of social security that the risk being dealt with be pooled through collective assumption of the financial burden of paying benefits. The language of the draft convention need not favour any particular combination of tax or contribution arrangements, though an undue or onerous burden on persons of small means should be prevented. The language suggested also seems to support the desireability of placing an upper limit on the share of employees so that at least half the revenues of social security schemes would be derived in a more social manner through subsidies from general revenues or employer contributions.

The acceptance of responsibility for the general solvency of schemes involved somewhat different considerations depending on whether the administration of the scheme is a direct responsibility of the state or is entrusted to self governing organisms.

In their replies to the observations of the Office, the responding governments agreed that several methods of financing should be permitted, and that there should be some limitation on the share of the cost to be borne by the employee with respect to schemes protecting only such persons and their dependants. Several governments wished to modify the original suggestion that as regards a scheme only protecting employed persons and their dependents not more than 50% of the finance should be gathered from

employee contributions since this would render many slightly developed countries unable to comply with the standard.

Other countries felt that the limitation on the contributions of employees should be fixed in relation to the total joint contribution of employer and employee rather than to the total costs of the benefits and administration, though this method cannot be used in schemes financed entirely by employee contributions and the State, a method often found in schemes under which only employees are insured, as unemployment insurance. Further information supplied to the ILO by the member States also tended to show that the suggested 50% rule was somewhat strict, particularly in respect of voluntary insurance schemes where there were no employer contributions, and as a result the fraction required was raised to 3/4. France thought that this principle of limiting employee contributions should also be applied, mutatis mutandis, to schemes protecting employees and persons working on their own account, and the UK would extend the principle to all branches concerned with contingencies related to employment. The Swiss government thought it necessary to include a financial reference period in the provisions, such period being much longer than one year. Sweden also wished to introduce some flexibility into the scheme, so as to allow her unemployment scheme which normally was 50% state financed, though in years of low unemployment this percentage was reduced.

As to the general responsibility for the solvency of national schemes, only four members reject the principle, feeling that in certain countries full financial responsibility is borne by autonomous institutions. Luxembourg felt that this formula was too general, and that the state should be responsible in pensions schemes only where there is a depreciation of reserve capital as a result of currency devaluation. Ceylon felt that the state should meet the costs of administration in order to provide a fair margin of solvency for the fund.

When the question of financing was considered by the Conference Committee of the 34th Session, it was thought to be generally agreed that the final incidence of contributions among the various parties cannot be satisfactorily determined in international regulations. The pre-war conventions did not lay down a general principle, some, as we have seen, requiring joint contributions from worker and employer, some requiring an additional state subsidy, some being silent on the matter. The only provision which the Committee was prepared to recommend was to ensure that hardship to persons of small means was avoided. The employers representatives proposed and the Committee adopted a precautionary clause that the method of financing should, for each branch covered by ratification, be determined in the light of the countries economic and financial situation and the scope of the protection provided. Where a scheme provided compulsory insurance

for employees only, the Committee felt justified in limiting the employees share of the charge to half the expected cost of both benefits and administration. A further proposal by a government member to relate the employees share to the contribution income of the scheme rather than to the cost of benefits and administration was not acceded to by a majority of the Committee. As regards voluntary insurance, where the state provided a subsidy, it was agreed that the insured persons share might be as much as three quarters. In any event, each state must accept general responsibility for the solvency of any scheme covered by its ratification and in particular should ensure that actuarial valuations are made periodically and in any event before changes are made in the rates of contribution or special taxes earmarked for the financing of the scheme.

Article 67 of theDraft Convention permitted financing by taxation or contribution provided that hardship to persons of small means in avoided: for each contingency due regard must be had to the economic and financial situation of the State and the classes of person concerned. Where insurance is compulsory and only employees are insured, the aggregate of insured persons must not contribute more than 1/2 of the expected costs of benefit and administration. Each member State must accept general responsibility for the provision of benefits and the periodical actuarial checking of the financial provision.

It was also decided to extend the limitation on the employees contribution to schemes not confined to employees and not compulsory. A Polish suggestion to reduce the limit

to 1/3 was not accepted. Further, for the purpose of applying this limit, contingencies might be grouped, with the exception of family allowances, since the latter are generally financed by employers and/or taxation and its inclusion would allow higher rates of contribution by beneficiaries to be exacted without forcing the total fraction over 1/2. The text was also amended to meet the UK's request for clarification that expected cost referred to the scheme at maturity.

903. Problems of financing a Medical Care scheme.

A number of other problems arise in connection with financing which it would not be appropriate to argue at length in this discussion, though some mention ought perhaps to be made.

One of the most difficult problems arising through the desire that the method of financing a medical care service does not disturb the relationship between doctor and patient. For this reason three solutions have been canvassed: one, fee-for-service, as in France and New Zealand and (for dental practitioners) in Great Britain has the advantage of being most similar to that prevailing in private practice and is only most favoured by the profession. Theoretically it should provide the closest balance between remuneration and the quality of the service provided. Yet administratively it is a cumbersome system, requiring the keeping of detailed records, the elaborate costing of fees for different types of services and it further involves the danger that money values may influence the type of treatment

given. A second method adopted is the payment of a fixed salary. This is adopted by the United Kingdom for the payment of specialists and hospital staffs and is widely used in South America. This method avoids the administrative difficulties which we have outlined but runs into the necessity to find a compromise between what the profession feels is fair and reasonable and what the general public feels is in line with other professional salaries and it faces the objection of the profession that it offers no rewards to the skilful or assiduous practitioner, even though in some systems increments are paid for additional qualifications.

The third method adopted is the capitation system, to be found in Great Britain for general practice. This provides an incentive to give good service without a temptation to provide unnecessary service. The determination of the rate, however, may cause difficulties. The doctor with an average panel must achieve a fair income and yet the young doctor not yet established in the profession must receive a living salary.

As a result of the removal of financial considerations, some people have seen an improvement of patient-doctor relationships, and that better professional service has resulted. The fear that a third party would be interposed between doctor and patient seems not to be justified, except where the doctor is the certifying agent for a cash benefit system.

904. Problem of accumulation of reserves:

A second minor problem to be briefly mentioned concerns the question whether reserves should be accumulated from contributions or whether expenditure can be met merely out of current income. Problems of this nature tend to change as the coverage of protection approaches universality, and in recent thinking accumulation of reserves is nowadays regarded as vital only where coverage is limited to a section of the community and where the recurrence of risks fluctuates markedly but within predictable limits or where a long term trend can be predicted. A further essential factor for the successful operation of long term financing is stability of the value of money.

This problem has a special relevance to the financing of unemployment benefit, since in a depression the amount of benefit paid may be many times that during normal conditions. There seem to be two lines of though current in this respect:- first, although in times of slump unemployment insurance ensures a redistribution of income between employed and unemployed, in order to use unemployment insurance as a built-in stabilizer, the "averaging of cost" process must cover year to year as well as person to person. Second, to increase the burden of taxes to finance a current unemployment programme would be ineffective psychologically since such extra taxes would have a depressive effect on the creation of new employment. Two types of accounting have, therefore, been adopted, a) a level rate of contribution aimed to balance

the fund over a long period, b) a variation of the tax rate with fluctuations in the general level of activity.

905. The payment of contributions and social responsibility:

A third point of discussion concerned the retention of some form of the contributory principle to enhance the sense of social responsibility. Lord Beveridge said

"The citizens, as insured persons, should realize that they cannot get more than certain benefits for certain contributions, should have a motive to support measures for economic administration, and should not be taught to regard the state as the dispenser of gifts for which no-one need pay."[86] An important aspect of this argument is the aim to make the worker feel entitled to his benefit as a right. Again, the cost of such services, on top of the cost of other government activity, requires some tax on low income receivers (the prime beneficiaries) in order to raise the required revenue.

906. C) Administration:

The prime matter to be considered on the question of administration is the form of organization to be adopted for the administration of the scheme. Is it to be by means of autonomous or semi-autonomous bodies or should administration be retained in the hands of the state? Varying approaches to this question based on tradition, social structure, and other circumstances peculiar to each country suggest that it might not be wise to seek in international regulations a common form of organization for all countries. But, on the other hand, certain common principles do occur

which seem to be common to all schemes. For example, it appeared desirable to refer to the different interests which should be represented in administration and to the ultimate or residual degree of responsibility for administration which should be retained by the State.

Existing pre-war conventions for Pension and Sickness Insurance specify that administration shall be by non-profit institutions, and in the case of the former direct state administration is permitted without condition.[84] For the latter, however, it was provided that administration should normally be entrusted to self-governing institutions operating under state supervision and in the management of which insured persons participate. State administration is permitted only where national conditions make the use of self-governing institutions difficult or inappropriate. The Maternity and Unemployment Conventions make no provision on this subject. That on Employment injury merely lays down that benefits may be provided by the employer or by a sickness invalidity or accident insurance institution.[84]

Existing national schemes show considerable differences as regards administrative organization. There seems to be a tendency for schemes having a social insurance character to be administered by autonomous institutions and for schemes protecting all residents or residents of insufficient means to be administered by the state. Many countries make specific provision as to the interests to be represented on the various bodies.

The governments who replied to the questionnaire felt

by a small majority that the persons employed, the employers if they contributed as such, and the public authorities, should be represented on the administrative or consultative bodies of social security, but no such majority was found to support the suggestion that other groups should be represented.

Denmark argued that it may be expedient to have employers represented even if they do not make payment of contributions. Austria felt that there was no need for representation by public authorities and Chile rejected the whole proposal in favour of administrative and consultative bodies composed of technical experts. New Zealand thought that the right to ratification should not be dependent on the representation of outside groups in the administration and this is supported by five governments which felt that it is unwise to lay down fixed rules on this point. On the other hand Poland thought that the representation of insured persons was indispensable and should be guaranteed by the convention.

7 governments accepted the principle of allowing representation to other groups or organizations. France also supports this view, but for the reason that this is essential to the development of social policy rather than for technical problems of good administration. 5 governments could not accept the proposal and 9 others feel that the matter should be left to national legislation. The great majority of replying States accept the principle of general responsibility for administration and efficiency.

The Office, after consideration of these opinions,

felt that the wishes of member states would best be met by inserting in the draft convention the requirement that representation of the persons protected must be included in the management of security schemes, though the participation of other groups should be left to national legislation. A clause was also added to take account of schemes in which the persons protected are represented indirectly in the administration, in view of the fact that the authority administering the scheme is a government department responsible through its Minister to the legislature.

When this question was considered by the Conference Committee of the 34th session, this general position was accepted, though the employers' members made an attempt to amend the provisions in respect of schemes financed mainly by contributions based on wages. The amendment which provided for the representation of both employers and workers in the management of such schemes was rejected by 25 votes to 55 with 6 abstentions.

Thus, under A.68 of the draft Convention, where the administration was not entrusted to a government department responsible to a legislature, representatives of persons protected are to participate in management or be associated with it under prescribed conditions. The member state is also to accept general responsibility for the proper administration.

At the suggestion of the UK, a new Article dealing with disqualifications was added, in order to bring the text in line with that of existing conventions. Nine causes of permissible suspension of benefit are listed as follows:-

a) maintenance at the public or social security expense

b) receipt of another benefit (except family allowances) or indemnity from a third party

c) where the claim is fraudulent

d) where the contingency is caused by a criminal offence committed by the claimant or by his wilful misconduct

e) where the claimant neglects to make use of the medical services or

g) the unemployment services at his disposal

h) in the case of unemployment, where it is caused by a trade dispute or by his leaving his employment without due cause

i) in the case of a survivors pension, where the widow is living with a man as his wife

907. D) Equal Treatment of Non-Nationals:

The Equal Treatment of Non-Nationals is a problem which has from the earliest days of International Social Security been in the forefront of development. Discrimination against aliens was, perhaps, one of the most glaring cases of injustice for which international action was clearly needed. Thus, Convention 19 (in force 1926) required equal treatment for foreign workers and their dependents irrespective of residence.[84]

One result of this rule was that where States wished to protect their own citizens living abroad the difficulty arose as to how this could be done without discrimination against aliens. Again the feeling arose that, although there was reason for preventing discrimination where the benefit was contributory, there was no such case for

non-contributory benefits particularly where they were paid without proof of need.

When the ILO considered this problem, the Office pointed out that many schemes do not make any distinction between nationals and non-nationals, but it is common to find that this distinction is made in respect of contingencies other than employment injury or unemployment. This principle is particularly strongly entrenched in Northern Europe. It is important to note that the pre-war conventions on social insurance did not permit this distinction, though there is an exception in the Unemployment Provision Convention as regards payments from funds to which the claimant has not contributed.

This was accepted by the majority of governments, though with some comments. Poland even argued in favour of payment to foreigners living abroad. France, Norway and the UK would with some reason restrict equality to foreigners ordinarily resident. Finland, India and Turkey would require reciprocity; Finland would agree in respect of schemes financed by ordinary taxation. Luxembourg wished to retain equality for those persons protected by the payment of contributions and the UK felt that special provision was necessary for benefits paid out of public funds and allowances paid to persons who do not fulfil the necessary conditions for a normal pension. Ceylon and Pakistan, however, thought this requirement would be too stringent. Denmark was also opposed to the principle, since it would not arise with a contributory scheme, but that distinction is necessary under a social assistance scheme which has no

conditions of residence. The Netherlands and Sweden also favoured a minimum period of residence where the benefit is not paid on the insurance principle. In discussing these replies the Office suggested the possibility of a longer period of residence for non-nationals, though not where the benefit is conditional upon a minimum period of contribution or employment.

The slightly different question of the maintenance of the rights of non-residents also arises. A majority of governments were in favour of equality of treatment for non-nationals on this point, even where they had ceased to reside in the country, though it was felt that this should be dealt with by a separate treaty. Poland wished to devise a clause under which periods of insurance in two or more countries could be aggregated. Netherlands would only admit the clause where the system was contributory. Italy proposed that the responsibility for the sickness of dependents should fall on the country in which the breadwinner is insured, even though the dependents were not living in that country.

It is of interest to note that the questionnaire included a special inquiry in respect of the advanced standard as to whether persons who are not nationals should receive the same treatment as nationals as regards the maintenance of rights acquired in a particular country, even where such persons ceased to reside in that country, provided that the details concerning the administration of benefits could be fixed by special arrangements or treaties.

Draft Article 69 required that non-national residents

should have the same rights as national residents, though where a benefit is not conditional upon minimum periods of employment a period of residence or a more onerous period of residence may be imposed on non-nationals.

Existing conventions on Workmen's Compensation, Sickness, Invalidity, Old Age and Survivors Insurance do not permit any discrimination.[94] The subject was extensively discussed in 1951 at the committee stage which approved the substance of Article 69. It was, therefore, proposed only to make two additions, first that no more onerous provisions as to residence might be enacted for benefits conditional on employed status at the time when the contingency occurs: second, following the UK suggestion a further distinction on the same conditions between nationals borne inside and outside the states territory.

908. E) Final Articles:

The Preliminary text also included several miscellaneous articles which require a bare mention: A.70 that the convention should not be regarded as revising any existing convention; A.71 for supercedence by subsequent conventions; A.72 dealing with Federal States has been discussed under "ratification"; Article 73 provides an obligation to report annually, particularly on compliance with statistical conditions specified in various Articles and on progress towards ratification of further parts. Slight changes were made here mainly to achieve uniformity of presentation.

Finally two new Articles were included aimed to exclude contingencies occurring before the coming into force of any part for any member state and to exclude seamen and sea-

fishermen, since they are considered to need a highly specialized system of protection, such as that contained in the 1946 convention.

909. Advanced Standard: "not even a decent burial". [85]

To those who are concerned with the achievement of theoretical perfection consistent with political and social reality, the story of lack of progress towards agreement on an advanced standard is very disappointing. Not only do the proposals made in Report V(b) read as a higher minimum standard rather than as objectives for which national schemes must strive, but further consideration seems to have been indefinitely postponed.

The 35th Session at Geneva after considering the Objectives and Advanced Standards of Social Security, was content to adopt a resolution as follows:-

"The Conference,

Having considered the report of the Committee appointed to examine the fifth item on its agenda, and

Considering that the preparation of an instrument dealing with the objectives and advanced standards of social security is likely to involve problems of even greater complexity,

Invites the Governing Body to re-examine the question of objectives and advanced standards of social security and to choose an appropriate time for placing it on the Agenda of the Conference."

and there the matter at present rests.

An examination of the suggested terms made during the consideration of Report V(b) does not indicate many of the

objectives of an advanced standard, so that it appears that it is unlikely that, even if consideration of the report were continued, much use in the construction of international standards would be forthcoming.

In conclusion, therefore, one must hope that "the appropriate time" will quickly arrive and that the whole question of Objectives and Advanced Standards be reconsidered so as to provide firm guidance in the construction of developing national schemes.

APPENDIX A: The United Nations and Social Security.

Discrimination practised by certain States against immigrating labour and in particular against labour recruited from the ranks of refugees was debated during the General Assembly's fourth session. By resolution 315 (IV) of 17/11/48, the Assembly decided to transmit the records of its discussions on the subject to the ILO with the request that the organization "should do all in its power, in view of the principle of non-discrimination embodied in the Universal Declaration of Human Rights ..." to expedite the ratification by its members of the relevant Convention and recommendation dealing comprehensively with migration for employment which had been discussed by the International Labour Conference at its 32nd session.

It is notable that the European Convention for the Protection of Human Rights and Fundamental Freedoms, though referring to the Universal Declaration, enumerates the right to live, freedom from slavery and forced labour, the right to liberty and security of persons, the right to a fair trial, protection against retro-activity of the laws, the right to privacy, freedom of thought, conscience and religion, freedom of expression, assembly, and of association, and the right to marry;- the right to own property, the right to education and the right to free elections were added by a protocol to the original convention - but nowhere are mentioned rights of social security.

The right to social security has been written into the recent constitutions of many countries. The Indonesian provisional constitution of 15th April 1950 recognises in

sections V and VI of Chapter 1 the right to social security and the right to work. The Syrian Constitution of July 1953 also reflects the wording of the Universal Declaration in recognizing the rights to property, work, and insurance against sickness, disability, orphanhood, old age and unemployment. The basic law of the Federal Republic of Germany of 23 May 1949 guarantees to the citizens the rights embodied in the Universal Declaration.

It is also of interest to consider the manner in which the wording of the Universal Declaration was moulded in its final shape. For example, the final text of Article 22 was as follows:-

"Everyone as a member of society has the right to social security and is entitled to the realization, through national effort and international co-operation, and in accordance with the organization and resources of each state, of the economic social and cultural rights indispensible for his dignity and the free development of his personality."

The original draft, however, did not recognize the limitations imposed on the ability of States to create a social security system by economic conditions and proposed an unqualified duty. It also attempted to enumerate the categories of social security, referring to them as "the risks of unemployment, accident, disability, sickness, old age and other involuntary or undeserved loss of livelihood". The drafting Committee, however, soon discerned this first weakness and added special protection for mothers and children. The Commission on Human Rights at its second session attempted a different line: the draft

which it approved set forth the right to preservation of health through the highest standard of food, clothing, housing and medical care which the resources of the state or community can provide. At the third session, however, the final text was adopted, with the small exception that the conception of the free development of personality was not yet added. In the General Assembly there was considerable debate, particularly on the ground that the text had reverted to the broad term "social security" and no longer attempted a definition of the individual services to be covered by this term. Mr.Alvarado of Peru supported by M.Cassin of France and Mr.Sagues of Chile argued that social security meant social justice in the broad sense, and not protection of the individual from want in the narrow sense. Mr.Pavlov of the USSR attempted to amend the Article so that it should contain the idea that the State and Society should ensure to the individual the realization of social economic and cultural rights and also that they must give him a real opportunity to enjoy all the other rights enunciated in the declaration. He called in aid the French and Lebanese proposal in the Commission on Human Rights to insert a further Article by way of introduction and emphasis of the economic social and cultural rights.

South American delegates played an important part in the debate. Mr.Santa Cruz of Chile proposed that in order to avoid confusion, the Article should be redrafted to read at the beginning "Everyone, as a member of society, has the right to be protected, biologically and economically, against insecurity". The Argentinian delegate, Mr.Corominas,

thought that a distinction should be made between social security and social insurance, which was an administrative function, private or public, the principle of the former being clearly established in the Declaration. For the United States, Mrs.Roosevelt stressed the importance to the meaning of the Article of the phrases "through national effort and international co-operation" and "in accordance with the organization and resources of each State".

At the conclusion of this debate all amendments were rejected, with the exception of the slight alteration to which we have previously referred, and the Article was finally approved by 36 votes to nil with 3 abstentions.

We must also consider briefly the next Article in the Declaration since the principles it involves are of basic importance. The final text of the Article reads as follows:-

"1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2) Everyone without any discrimination has the right to equal pay for equal work.

3) Everyone who works has the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity and supplemented if necessary by other means of social protection.

4) Everyone has the right to form and to join trade unions for the protection of his interests."

The first draft of this Article as prepared by the Secretariat is perhaps of more interest from our point of view, since it contains a statement of the duty to perform socially useful work. The contrast of this conception with

the "free choice of employment" of the final text is striking: we may well ask who is to determine what work is socially useful. If this judgment is left to the individual it is clearly meaningless, whereas if the State has the power of choice this is clearly incompatible with the free choice of occupation. The conception of duty was not, however, pressed. The Secretariat draft also stresses the right to perform socially useful work, and the right to such equitable share of the national income as the need for his work and the increment it makes to the common welfare may justify and also to such public help as may be necessary to make it possible for him to support his family.

The Drafting Committee, however, concertinad the original draft into a statement of the right to perform socially useful work and a statement that human labour is not a merchandise, but shall be performed in good conditions and shall secure a decent standard of living to the worker and his family. At its second session the Commission on Human Rights reintroduced the idea of duty, but in the form of a duty on the State to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work and a further duty to take all necessary steps to prevent unemployment. At a later stage, however, these new ideas were abandoned in favour of a right to work, to just and favourable conditions of work and pay, and to protection against unemployment, together with the rights to equal pay and the formation and membership of trade unions.

The General Assembly had great difficulty over this Article. Two amendments by Cuba and the USSR were at first adopted but the amended draft was rejected. It appears from the debates that the difficulties were caused by the position of the state and of trade unions, though a man's right to work seems to have been generally accepted. Mr.Pavlov of the USSR was much to the fore, arguing in favour of the inclusion of something other than mere generalities which could help the unemployed, though he admitted that employment could not at present be guaranteed in all countries. Another form of difficulty was shown by Mr.Thorn of New Zealand who states that he could not accept any text which left the individual free to join or not to join trade unions, since the power to compel trade unions membership was well established in his country. The United Kingdom representative thought a text obliging States to guarantee the right to work would be so all embracing and vague that it would be difficult to implement. She felt that Article 56 of the Charter bound member States to take measures to realize the objectives set forth in Article 55 and which mentioned "higher standards of living" and "full employment". Finally a revised version was accepted by 39 to 1 with 1 abstention.

Article 24 is concerned with the right to rest and leisure, to reasonable limitation of working hours and to periodic holidays with pay, but is not of immediate importance in our argument. Article 25, however, does concern us. The final text read as follows:-

"1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2) Motherhood and childhood are entitled to special care and assistance. All children, whether borne in or out of wedlock, shall enjoy the same social protection".

The original Secretariat draft was in the form of two Articles. The first declared the right of everyone to medical care, placing a duty on the state to promote public health and safety: the second the right to good food and housing and to live in surroundings that are pleasant and healthy. The drafting Committee, no doubt realising the difficulties attending so high an objective, rephrased this as a right to the highest attainable standard of health, without distinctions as to economic or social conditions. It is not clear, however, whether the economic and social conditions referred to relate to the individual or to the State. If to the former, then the use of the word "attainable" gives room to the underdeveloped country to strive for the ultimate standard by stages.

The drafting Committee also made clear the responsibility of the State for the provision of adequate health and social measures. The Commission on Human Rights at its second session, however, broadened this to a declaration of the right to social security, defining this as a duty on the

part of the State to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequences of unemployment, disability, old age and all other loss of livelihood through causes beyond his control. A special sentence was added that motherhood should be granted special care and assistance, and placing children in a similar position. The third session of the Commission brought the text into substantially its final form. The discussion in the General Assembly was directed mainly towards a sharper definition of the rights of social security and on the further point of the rights of illegitimate children. On the former point, the USSR delegate wished to emphasise that the financing of social security should be at the expense of the State or of the employer, according to the conditions prevailing in each country. The final text was adopted unanimously.

We must also consider Article 28, which declares that "everyone is entitled to a social and international order in which the rights and freedoms set out in the Declaration can be fully realized". It is not clear at first sight whether this adds at all to the obligations placed on the State by the Declaration, but the drafts and debates are of interest. The original Secretariat draft, in a parallel fashion to the earlier Articles which we have discussed, put a firm duty on the state to respect and protect the rights enunciated in the Bill of Rights and where necessary to co-operate with other States to that end. The drafting committee, however, felt that no proposal was necessary here, a view that was adopted by the Commission

on Human Rights at its second session, though at the third session a text was adopted which differs only from the final text by the insertion of the word "good" before the phrase "social and international order". In the General Assembly, several members thought that the Article could be deleted without weakening the Declaration. The USSR, however, wished to delete the word "good" and proposed an amendment to this effect. Mr.Pavlov argued that even if all the rights and freedoms set out in the Declaration could be fully realised, there was still no ground to conclude that the resulting social and international order would necessarily be good. He went so far as to observe that even the formal realization of a right did not necessarily mean much in practice. The principle of equality had once been of the greatest importance; it had led to the abolition of serfdom and slavery; the USSR thought that as long as society is divided into exploiters and exploited, so long as there is private ownership of the means of production, the social order could not possibly be a good one. The USSR did not ask that the Soviet legal order be approved, but merely that, since two conflicting views were involved there should be no moral evaluation in the Declaration of either order. The final verdict, as Mr.Pavlov dramatically put it, should be left to history.

This argument seems to have had some effect on the Western powers, since they accepted the amendment, though specifically not accepting Mr.Pavlov's arguments in toto. Mr.Maybank of Canada observed that, should the rights set forth in the Declaration be achieved, the social and inter-

national order would be good, whether it related to capitalism, communism, feudalism or any other system. This final text was adopted by the General Assembly by 47 votes to nil, with 8 abstentions.

It is further instrictive to notice tne considerable differences in form between the two draft covenants which are now under consideration to eomplete tne Bill of Rights. If we may consider the machinery for implementation first, we find in tne case of the covenant of political and civil rights no less than 24 Articles out of 50 creating an elaborate machinery for enforcement. A Human Rights Committee is set up, consisting of nine members. There are elaborate provisions for the election of the members who are normally elected for a term of five years and for the conduct of the committee. Article 40 commences the provisions empowering the Committee to take action: thus where one State party to the convention considers that another State party is not giving effect to a provision of the covenant, the matter may be brought to the attention of the transgressing State. Three months thereafter the latter is bound to render an explanation. If no adjustment is accomplished within 6 months, either State may refer the matter to the Committee and the Committee may take action provided that all available domestic remedies have been invoked and exhausted. The Committee may call on the States to provide all relevant information in its attempt to ascertain the facts and is under the duty of making available its good offices with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in the Covenant. The

Committee is under the further duty to report for the Secretary-General within 18 months of the notice received by it. The report, in default of an agreed solution, is to reach a conclusion as to whether a breach has taken place and may recommend that the International Court of Justice be requested to give an advisory opinion, though the matter can have been brought previously before the Court by the parties.

If, however, we compare the equivalent provisions in the draft covenant relating to economic, social and cultural rights, we find in place of the creation of a Committee merely an obligation to report to the Secretary-General the progress made in achieving the rights recognised in the covenant. The reports are to be furnished in stages, arranged in accordance with a programme to be established by the Economic and Social Council after consultation with the States' Parties and the specialized Agencies concerned. By Article 24 the States' parties agree that the international action for the achievement of these rights includes such methods as conventions, recommendations, technical assistance, regional meetings and technical meetings, and studies with governments.

The body of the latter convention represents an unhappy compromise. Article 6 recognises that work is the basis of all human endeavour; The States' parties to the covenants recognise therefore the right to work, that is to say, the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts. The steps to be taken by a party to the covenant

to achieve a full realization of this right is to include programmes, policies and techniques to achieve steady economic development under conditions safeguarding fundamental political and economic freedoms to the individual. It is noticeable here that there is no duty placed on the individual to work for the benefit of the community. Article 7 deals with just and favourable conditions of work: Article 8 with the right to join trade unions. Article 9 deals with Social Security in the narrow sense, simply recognising the right of everyone to social security. Article 10 deals with the special case of motherhood and maternity and provides for special measures of protection on behalf of children and for the family as a unit being the basis of society. Article 11 deals with the right to adequate food, clothing and housing, and the following Article with the right to an adequate standard of living and the continuous improvement of living conditions. Health is given a special place by Article 13 which stresses the positive side and recognises the right of everyone to the highest attainable standard of health. The following Article deals with the right to education. It can be seen from this brief outline that even if the present draft covenant were to be signed and ratified by a substantial number of nations, little of value will have been added to the gamut of obligations incumbent on the State, at least in respect of social security.

We may also notice with interest some of the opinions expressed during the debates on the Declaration and Covenants by the various countries. For example the Byelorussian USSR

argued that Articles 19 and 13, dealing with the rights to impart and seek information regardless of boundaries and freedom of movement and residence encroach upon the sovereign rights of countries and that this is pregnant with very dangerous consequences in the future. Canada felt that many of the difficulties and ambiguities of the Declaration might have been removed if the document had been reviewed by a body of international jurists before final approval. Chile thought that it was clear from the debates that an overwhelming majority of members were of the opinion that a decision that the State has authority to decide the means and measures of application of the various rights and freedoms this would mean waiving forever one of the fundamental human privileges.

France likened the structure of the Declaration to four pillars. "The first pillar is personal rights, such as the right to life, to liberty and to security of person. The second pillar can be found in the relationship between man and man, and man and families, and groups and the things that surround them.... Our third pillar is that of public liberties and fundamental public rights - the freedom of conscience, the freedom of speech, of association, of meeting - including the statement which is the basis of all political rights - that all government derived from the will of the people. And finally we have the last, but certainly not the least, important.. the pillar of economic social and cultural rights, which have now found their proper place standing side by side with the right to juridical and material liberties. On these four pillars we

had to build something else - and that something else constitutes the final provisions of the declaration, which provide for the ties between the individual and society, rules which affirm the need of a good international and social order and an international and social order under which rights would be respected... but which would also provide limits which man cannot break."

India thought that the right of dissent was one of the most valuable gifts of democratic freedom and that we should take care not to abridge political rights in order to realize social aims, however noble they may be. The delegate of the Lebanon said that this was the first time the principles of human rights had been spelled out authoritatively and in precise detail. The Netherlands delegate regretted that the origin of these rights had not been specifically referred to, since he thought man's rights and freedom were based on his divine origin and immortal destiny. The New Zealand delegate felt political satisfaction over the position given in the declaration to economic and social rights, since the experience of his country had taught that the assertion of the right of personal freedom is incomplete unless it is related to the social and economic rights of the common man. There is no dictator, he said, more terrible than hunger. South Africa felt that the declaration went far beyond the category of human rights which always have been and still are regarded as fundamental human rights and freedoms, and he doubted whether any real good would be achieved by accepting a declaration which would as regards many of its provisions

be more honoured in the breach than in the observance.

The delegate of the USSR commenting on Article 22 thought it very lame, since all the parts of the original text as had been of substance had been rejected. The most important part, namely that the state and society must guarantee such rights by all measures, including legislative measures, was rejected. "A little bit is left, and, as it is said in Russian Fairy tales, "only the toes are left, the body is gone".

APPENDIX B: Standards attained by national schemes.

Minimum Standard.

Six countries appear to cover all nine contingencies - UK, Belgium, Luxembourg, Holland, France and Austria. New Zealand lacks only maternity coverage and employment injury pensions (as opposed to grants): Switzerland invalidity: (the cantons may provide social assistance): Sweden pays a lump sum only for maternity: Australia for maternity and employment injury; Germany lacks only family allowances; Poland unemployment insurance (on the grounds that there is no unemployment); Japan lacks child maintenance, though only lump sums are paid for incapacity or death from employment injury.

Seven contingencies are covered by Denmark, Norway, Ireland, Chile, Mexico and the Dominican Republic, unemployment and child maintenance being in most cases those omitted.

In summary, therefore, 11 countries might be able to ratify on the basis of at least three parts - namely Austria, Belgium, Canada, France, Federal Germany, Japan, Luxembourg, Holland, New Zealand, Poland and the UK. None of these countries need have recourse to the temporary standard. In addition, the Bill then under consideration in Chile would add that country to the list. The temporary standard would add the Dominican Republic, Mexico and Peru, also India when medical benefit is extended to the wives of insured men. In Australia and Sweden, only nationality conditions hinder ratification.

Advanced Standard. (Report V(b)).

Statistics provided suggest the following countries would achieve the advanced standard:

New Zealand: old age (when the rate attains 40%).

U.K.: medical care, sickness, unemployment, old age (where assistance satisfies the advanced standard).

Belgium: child maintenance (when school leaving age is raised to 15) invalidity sickness and (possibly) unemployment.

Luxembourg: child maintenance.

Holland: child maintenance and employment injury, sickness and maternity (probably).

France: employment injury and child maintenance.

Austria: child maintenance.

On the basis of the standards proposed in Report V(b) and of the suggestion there made that the advanced standard should require at least 6 contingencies to be covered, this standard would appear to be reached by 7 countries, namely the UK, New Zealand, Belgium, Holland, France, Luxembourg and Austria.

Notes:

1 Necker: De l'importance des opinions religieuses. Liège 1788. p.210

2 "Législation Sociale Internationale" p.36

3 Quoted by Troclet

4 Chapter XIII: Articles 387-427

5 c.f.Appendix A. "The United Nations and Social Security"

6 ILO Constitution A.19(3)

7 Ibid A.19(5)

8 Ibid A.19(7)

9 at p.43

10 No.2, in force July 1921

11 Ibid A.3

12 Ibid A.5

13 In force March 1923

14 In force February 1923

15 In force 1927

16 Ibid A.5

17 Ibid A.10(2) and A.11

18 In force 1927; revised 1934

19 In force 1926

20 A.2 and 3

21 At Geneva in 1927

22 At Geneva in 1933

23 At Geneva in 1934

24 For example Convention 35 Article 9

25 For example ibid A.12

26 The 19th Session (1935)

27 1944 Session at Philadelphia: Income Security Recommendations: General Principles

28 UK-France Treaty on Social Security

29 Signed in April 1949

30 Ibid clause 2

31 Ibid clauses 4 and 6

32 Ibid clauses 5 and 7

33 Ibid clauses 9-13

34 Ibid clauses 17, 18 and 20-22

35 Article 3

36 A.3(3)

37 A.5, 6 and 7

38 A.8

39 A.9-12

40 A.1 and A.2(a)

41 A.2(b)

42 A.2(c) and A.3

43 A.4-6

44 A.7 and 8

45 A.10(a)

46 Held in Mysore, December 1949 and January 1950

47 See Appendix A

48 See Appendix B for an estimate of the success of this aim

49 cf the wording of the Philadelphia Recommendation see note 27

50 At page 180

51 cf Draft Article 72

52 see Introduction

53 International Labour Review, Vol.59 at p.668

54 Compare the wording of the Belgium-France Convention of 1948 (ref:223)

55 See ref.222

56 See ref.601 para.3

57 See United Nations Demographic Yearbook

58 Egyptian Social Security Law of 1950

59 See Draft Article 65

60 See ref.415 para.7

61 See Conventions nos.12 and 17 (ref.211)

62 See Articles 38 and 39

63 See Articles 44 and 45

64 See point 25 of the Income Security Recommendation

65 See Conventions 24 and 25 (ref.212)

66 Convention 44 of the 18th Session on Unemployment provision (see ref.212)

67 Convention 35 of the 17th Session (see ref.212)

68 See ref.621

69 See ref.622

70 See ref.804

71 See draft Article 47

72 For more detail see Eveline Burns (Social Security and Public Policy)

73 See "Social Security programmes and economic stability" (Social Security Administration 1954)

74 See report V(a)(2) at p.110

75 See paras.20-22

76 See p.37

77 See report V(a)(1) at p.18

78 See ref.706

79 See ref.601

80 See Elizabeth Wallace in Canadian Journal of Economics and Political Science (May 1952 p.133)

81 cf Conventions 24 and 25 with 17 (ref.211,212)

82 at P.277

83 See ILO series M.No.6, p.445 et seq.

84 See refs.211 and 212

85 For further material on the Advanced Standard, see references 304, 431, 504, 630, 709 and 804

86 See Social Insurance and Allied Services Report (1942) at p.108

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The Literature on International Social Security has been largely dominated by the publications of the International Labour Office. The reader is referred to the following publications of that Office:-

The International Labour Review: in particular:-

Social Insurance and International Legislation - Krzeczkowski Vol.8 637

The Unification of Social Insurance - Pribam Vol.11 303

The Administrative Machinery of Social Insurance - Cohen Vol.11 474

Social Insurance Benefits - Manes Vol.11 611

The ILO and Social Insurance - Vol 11 763

Building Social Security - Stein Vol.44 247

Modern Social Security Plans and Unemployment - Eckler Vol.48 555

Post-War Trends in Social Security - Income Security Vol.59 668 and 60-28, 111 and 238

The following Official publications of the ILO:-

34 Report IV (1) "Objectives and Minimum Standards of Social Security"

35 Report V(a)(1) } Minimum Standards of Social Security
35 Report V(a)(2) }

35 Report V(b) Objectives and Advanced Standards of Social Security

Studies and Reports - New Series 23 - International Survey of Social Security

Studies and Reports: Series M (Social Insurance)

: New Series

: Legislative Series

Industry and Labour Information

Industry and Labour

International Labour Review

Official Bulletin

Annual Report to the United Nations

Record of Proceedings at the Conference

International Labour Conference Conventions and Recommendations

The International Labour Code (1951)

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Burns : Social Security and Public Policy

Beveridge : Social Insurance and Allied Services

Interdepartmental Committee on Social Insurance and Allied Services

Troclet : Sécurité Sociale Internationale

U.S.Department of Health, Education and Welfare:-

Health and Maternity Insurance throughout the world

Old Age, Survivors and Invalidity Programs throughout the world

International Conciliation

International Organization