REPORT IV(2)

INTERNATIONAL LABOUR CONFERENCE

TWENTY-SIXTH SESSION

SOCIAL SECURITY: PRINCIPLES, AND PROBLEMS ARISING OUT OF THE WAR

International Labour Conference

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Social Security: Principles, and Problems Arising out of the War

Part 2: Problems Arising out of the War

Fourth Item on the Agenda

ILO

MONTREAL
International Labour Office
1944

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ERRATA

Page 39. The last sentence of the third paragraph should read: "For this reason it is specified in paragraph 3 of Article 2 that the basic wage should be that current at the date at which the recruiting country first organised recruitment in the country of residence, that is, the same date as that of the basic exchange rate."

Page 78. In fourth and third lines from bottom, for "increments at the rate of 60 RM for each year of insurance" read "an increment at the rate of 60 RM a year in respect of any period of insurance."

PREFACE

The circumstances in which the Governing Body decided to convene the Twenty-sixth Session of the International Labour Conference and the character of the questions placed on its Agenda are unprecedented in the history of the Organisation. The Governing Body considered that the stage had now been reached at which it was imperative that international consideration should be given to the social problems which will arise during the last period of the war and after the close of hostilities, and that it was of the greatest importance that the International Labour Conference should be able to discuss these problems and to take decisions concerning them at the earliest possible moment. It was for this reason that it decided to convene the Conference at the earliest date permissible under the Constitution, namely 20 April 1944, and authorised the Office to submit to the Conference proposals which it might take as the basis of its discussions.

In arriving at these decisions, the Governing Body was of course fully aware that within the time available the usual procedure for the preparation of the Conference could not be followed. This procedure is set forth in paragraphs 5-7 of Article 6 of the Standing Orders of the Conference. These paragraphs are of a special character in so far as they do not regulate the proceedings at the Conference itself but provide for the successive steps to be taken by the Office before the Conference meets. Where a single discussion by the Conference is envisaged, they provide for the circulation to Governments by the Office of a law and practice report and a questionnaire; the preparation of drafts for Conventions or Recommendations by the Office on the basis of the replies of Governments to the questionnaire; and the communication of these reports by the Office to Governments so as to reach them four months before the opening of the Conference.

The Governing Body did not consider it possible to follow this procedure as regards the social security problems arising out of the war, which are dealt with in this Part of the present Report.

The problems comprise:

(a) The maintenance of the social insurance rights of members of the armed forces;

(*b*) The re-establishment of the financial position of social insurance institutions in occupied countries;
(*c*) Mutual assistance in social security administration; and
(*d*) Emergency measures concerning the pension rights of displaced persons, including the revival of social insurance rights which were acquired before the war but have lapsed because of the war.

The Office has been able to make detailed proposals as regards points (*a*), (*c*) and (*d*). As regards point (*b*), it suggests that a clause should be inserted in any treaties or agreements concerning transfer of territory, including the resumption of control of an occupied area, to the effect that the social insurance rights of the inhabitants should be maintained, and that an international commission should be created in connection with the International Labour Office to supervise the necessary measures. This suggestion figures in the Report on Item II: *Recommendations to the United Nations for Present and Post-War Social Policy*. Meanwhile the Office might undertake a study of the very complicated questions of the maintenance of rights and the transfer of funds involved in these cases.

Accordingly, the questions dealt with in this Part of the present Report comprise:

1. Pension and sickness insurance for persons discharged from the armed forces and assimilated services;
2. International administrative co-operation to promote social security; and
3. The maintenance of the pension rights of displaced persons.

The question of social security protection for demobilised persons is already assuming practical importance and may well become a matter of major concern in the near future. For the general reasons which have been indicated in the Preface to Part 1 of this Report, it would seem possible for the Conference to adopt a Recommendation on the subject during the present Session, since the principle underlying the provisions of the existing Standing Orders has not the same application to the cases which the Conference is here considering as it normally has when the adoption of a Convention is proposed.

No question of conformity with the provisions of the Standing Orders of the Conference arises in regard to the subject of administrative co-operation to promote social security, since the only action which it is suggested that the Conference should take on

the subject at its present Session is to adopt a resolution requesting initial action on the part of the Office.

In regard to the question of the maintenance of the pension rights of displaced persons, it is suggested that the Conference should adopt a Convention. This is the only case in which the Office is proposing this course and its proposals have been framed in the form of a Convention because the purpose in view cannot be effectively attained in any other way. The proposed Convention, however, is essentially an adaptation, to situations resulting from the war, of the principles established by the Maintenance of Migrants' Pension Rights Convention, 1935, and it would therefore seem possible for the Conference to deal with the matter, in view of its urgent character, by means of a single discussion.

It is, of course, for the Conference to decide whether it is prepared to follow the suggested procedure. It appears reasonable, however, to assume that the Conference will share the view of the Governing Body that the International Labour Organisation would be failing in its duty if it did not, at the present juncture in the world's affairs, deal by an expedited procedure with the important and urgent questions placed upon its Agenda.

If the Conference approves the suggestions in regard to proceedings outlined in the preceding paragraphs, it would be appropriate that it should, when appointing a Committee to consider the suggestions included in Item IV on the Agenda, direct the Committee to take the proposals submitted by the Office in this Part of the Report on that Item as the basis of its discussion, with a view to the adoption by the Conference in the course of the present Session of a Recommendation concerning income security and medical care for persons discharged from the armed forces and assimilated services and from war employment, a resolution on international administrative co-operation to promote social security, and a draft Convention concerning the maintenance of the pension rights of displaced persons.

* * *

The three subjects which are dealt with in this Part of the Report on Item IV on the Agenda have one feature in common, namely, that they are problems arising out of the war in the field of social security.

The first subject—that of income security and medical care for persons discharged from the armed forces and assimilated services and from war industry—is dealt with jointly under Item III and Item IV. The provision to be made for demobilised persons consists, first, of mustering-out grants and unemployment allowances, and secondly, of pension and sickness insurance protection. The explanation of those provisions of the Recommendation which concern mustering-out grants and unemployment allowances, will be found in Chapter XIV of the Report on Item III on the Agenda. The explanation of the provisions which concern pension and sickness insurance for ex-service men and women, on the other hand, is contained in Section I of this Part of the Report on Item IV. The entire text of the Recommendation is for the sake of completeness reproduced in both documents, though only paragraphs 4-6 are for consideration by the Committee which will deal with Item IV.

The provisions on pension and sickness insurance for ex-service men and women are very simple. In essence what is required is that a person discharged from the armed forces or assimilated services shall find himself immediately protected by both branches of social insurance and that, as regards pension insurance, his military service should count to a prescribed extent as though it had been insurable employment.

The second subject—international administrative co-operation to promote social security—is here regarded as a post-war problem, because it may be expected that many Members will be reorganising their social security services immediately after the war, and that some of them could be considerably helped in this task by being enabled to draw on the more extensive or specialised experience of other Members. It is believed that co-operation in this field will serve to build up and reinforce friendly relations and understanding in a stratum of social administration that transcends national frontiers.

The third subject—the maintenance of the pension rights of displaced persons—is the most complex of the three post-war problems dealt with. A few words may be appropriate in order to indicate the importance of this problem and the special responsibility of the Conference for devising a solution for it.

Several million workers have been recruited by Germany, in some measure on a voluntary basis, but for the majority under duress, to work in Germany or in German-occupied areas in the interest of the German war economy; it may be that some of the allies of Germany have also recruited foreign labour to a small extent. These workers have, for the most part, been contributing to the German pension insurance system, but it is unlikely that any appreciable number will have become entitled to pensions before their term of employment ceases and they return to their respective countries. The problem is to secure that the contributions they have paid during their employment abroad shall not be lost to them, but shall be taken into account in conjunction with the contributions they have paid or will pay under the pension insurance system of their own country at a time when, eventually, they claim an invalidity or old-age pension, or their dependants claim survivors' pensions.

At first sight the preservation of the pension rights, even of several million individuals, may appear to be a small affair against the background of the incalculable suffering and destruction caused by the war. From the standpoint of the International Labour Organisation, however, the question is important on the ground both of the principle, and of the number of workers, involved. Among the workers of Europe at least, displaced workers constitute a substantial proportion, and it is the duty of the Organisation to safeguard, as far as may be, the rights of workers as such in war and in peace, in any quarter of the globe, irrespective of race, nationality or religion. It is indeed a matter of concern to the Organisation that claims arising out of the social insurance systems which it has fostered and guided during the inter-war years, shall be duly satisfied.

The responsibility of the Organisation is especially involved when these claims are endangered through the displacement of workers from the pension insurance system of one country to that of another. Here the Organisation has behind it the precedent of the Maintenance of Migrants' Pension Rights Convention, 1935, which, even under the shadow of approaching war, had been gaining ratifications. For the Organisation to neglect to do all that is in its power to see that the principles for which it stands are honoured would be to weaken the authority, not only of the principles of social insurance, but of labour legislation generally. The particular principle which is here at issue is this: are workers who have contributed under a scheme of compulsory pension insurance to be guaranteed a fair return for their contributions? The Organisation has not been entrusted with the duty of distributing relief to war-stricken peoples, but this is a matter of right and not of relief. Personal rights of the most positive nature are here involved, the full recognition of which is indispensable for the continued confidence of the workers in the institutions of social insurance. Moreover, these rights are capable of assessment with sufficient precision in monetary terms, and a simple technique can be devised for giving effect to them. The Organisation is thus in a position to make an important and necessary contribution to the preservation of the personal rights of millions of workers in a particular field in which its competence is pre-eminent.

The question is also an urgent one. The millions of recruited workers will be returning to their homes, and, against the time of their return, it will be necessary to prepare to collect from them evidence of their insurance in the countries where they have been employed. They will be resuming affiliation with the insurance institutions of their home country, but these institutions will in many cases find themselves in a difficult financial situation, for they will have been deprived for several years of a substantial proportion of their fittest members, apart from any loss of reserves that they may have suffered during occupation. The return of these members, if quickly followed by the transfer to them of the sums representing the contributions paid by their members while abroad, will provide the institutions with some working capital, of which they will stand in need. The transfer, however, will not be affected in good time unless the States concerned attend particularly to the matter and secure for the sums in question a high priority in the discharge of international obligations arising out of the war. This is, therefore, a matter which calls for immediate attention.

Apart from workers recruited for employment in Germany or elsewhere outside their country of residence, there are many scattered refugees who are entitled, in virtue of their pension insurance in their country of origin, to old-age or invalidity pensions or, as the survivors of insured persons, to widows' or orphans' pensions. The payment of these benefits has in many cases been suspended during the war; it is necessary that payment should be resumed as soon as possible after the cessation of hostilities.

The proposed draft Convention would establish a special procedure for maintaining the pension rights of recruited workers, and would secure the application of the provisions of the Maintenance of Migrants' Pension Rights Convention, 1935, to other displaced persons.

As already indicated, no proposals are made in this Report for dealing with the problem of safeguarding the pension rights, either of the populations of occupied areas in which the German pension insurance system has been substituted for the system in force before the occupation, or of the populations of territories the sovereignty of which may be transferred as the result of the peace settlement. This problem, it is believed, is not susceptible of solution by a general international Convention. Nevertheless, the Organisation has a certain responsibility for seeing that any bilateral solutions arrived at by the countries concerned afford the proper safeguards. That responsibility was already recognised in the Treaty of Versailles, Article 312 of which provided for the creation by the Governing Body of a commission with power to make recommenda-

tions on the conditions of the transfer of social insurance reserves, corresponding to transfers of territory. The Organisation should doubtless have a similar function to perform in the future peace settlement. (See Report on Item II: *Recommendations to the United Nations for Present and Post-War Social Policy.*)

CONTENTS

SECTION I

PENSION AND SICKNESS INSURANCE FOR PERSONS DISCHARGED FROM THE ARMED FORCES AND ASSIMILATED SERVICES

NOTE: *In the proposed Recommendation, which will be found at the end of this Section, the provisions concerning pension and sickness insurance for discharged service men and women and those concerning unemployment benefits and other payments to the same class and to persons discharged from wartime employment are combined in a single text. The explanatory notes on those provisions of the Recommendation which concern mustering-out grants and unemployment insurance and assistance will be found in the Report on the Third Item on the Agenda.*

NEED FOR SPECIAL PROVISION

Pension Insurance

All schemes of compulsory insurance covering invalidity, old age and death make the award of a pension conditional upon the payment of a prescribed minimum number of contributions in the course of a prescribed period completed before the claim is made, and furthermore almost all vary the rate of the pension according to the number and rate of the contributions paid. Hence, when a person is called up for military service he will, if the service lasts a certain time, lose credit for the contributions already paid, and have to start a fresh qualifying period on his discharge, unless special provision is made for crediting him with contributions during his service.

Sickness Insurance

Most schemes of compulsory sickness insurance grant benefit without any qualifying period, but since the person discharged from service will not regain the protection of the sickness insurance until he has found insurable employment, special provision should be made for covering the risk during the intervening period.

Pension Insurance

Existing International Rules

Before World War II, several Members had made provision in their legislation for the pension insurance of persons engaged in military service.

General recognition of the desirability of such provision was accorded by the adoption in 1933 of the Invalidity, Old-Age and Survivors' Insurance Recommendation, which contains the following clause:

> The State should be responsible for the contributions in respect of periods of military service performed by persons who were insured before beginning their military service.[1]

It will be seen that the State is to pay contributions only on behalf of those persons who were insured before their service began. A provision so limited may be reasonable enough when the period of service is short, but it is clearly inadequate when the period extends to several years. The mere accident that an individual was not insured at the date when he was called up should not have the serious consequence of depriving him of contribution credits which may prove of great value. Moreover, it will be generally agreed that no practicable measure should be neglected for promoting the welfare of discharged service men and women, and reducing the economic handicaps they suffer as compared with civilian workers.

Existing Legislation

Among those Members which are or have been actively engaged in the War, only a minority are known to have provided for the maintenance of the pension insurance rights of their service men and women. This minority includes Czechoslovakia, France, Great Britain, the Netherlands and Poland. In the United States at the end of 1943 a Bill[2] sponsored by the Administration was pending in Congress, while in Brazil a Commission had been set up to consider the problem.[3]

Of the remaining belligerent Members, Australia, Canada, New Zealand, Norway and the Union of South Africa have general pension schemes under which neither the award of a pension nor its amount depend on the prior payment of contributions; discharged service men and women consequently have exactly the same status for pension purposes as other nationals.

[1] Cf. International Labour Office: *The International Labour Code* (Montreal, 1941), Art. 566, pp. 351-2.
[2] *Congressional Record*, Armed Forces Social Security Bill, 1943 (S. 1545), 26 Nov. 1943, pp. 13,089-91.
[3] *Diário Oficial*, 8 Sept. 1942.

Analysis of Legislation

Persons Covered.

Some of the laws simply maintain the rights of persons who were insured when they were called up, while others provide for the pension insurance of service men and women whether or not they were previously insured.

The first group of laws includes those of France[1], the Netherlands[2] and Poland.[3]

The second group includes the laws of Czechoslovakia[4], and Great Britain[5], to which may be added the abovementioned United States Bill.

In Czechoslovakia periods of military service are credited as contribution periods unconditionally to all persons who enter insurance within twelve months of their discharge.

In Great Britain all men and women members of the armed forces and assimilated services, below commissioned rank, are compulsorily insured during service. Moreover, temporary officers who were compulsorily or voluntarily insured before entering service are compulsorily insured during service, but must pay the employer's share of the contribution as well as the insured person's. Permanent officers who were insured before entering service are entitled to continue their insurance voluntarily under the same conditions as civilians, paying therefore, likewise, the entire contribution themselves.

The United States Bill applies to all men and women members of the armed forces and assimilated services, except those who were previously railwaymen or civil servants; for the protection of these persons' pension rights special legislation has already been adopted.

Risks Covered.

Of the three risks of invalidity, old age and death which give rise to pensions, all three are covered by pension insurance in Czechoslovakia, the Netherlands and Poland; old age and death

[1] Decree of 26 Sept. 1939, Section 4; cf. I.L.O.: *Legislative Series*, 1939, Fr. 17.
[2] Invalidity Act as Amended, Section 223; cf. *Legislative Series*, 1923, Neth. 6.
[3] Act of 28 March 1933, Section 153 (2); cf. *Legislative Series*, 1933, Pol. 5.
[4] Social Insurance Act as Amended, Section 253; cf. *Legislative Series*, 1934, Cz. S. 4.
[5] Contributory Pensions Act, 1936, Section 18; cf. *Legislative Series*, 1936, G. B. 5; Ministry of Health: Leaflet 29H.

are covered in the United States; and invalidity and old age in France. In Great Britain old age and death are covered by pension insurance and invalidity by sickness insurance.

Nature of Protection.

The protection may consist simply in freezing the rights which the insured person possessed when he entered service, as in Poland, or in the progressive increase in the value of rights as in Czechoslovakia, France, Great Britain and the Netherlands, and under the United States Bill.

In France and apparently in the Netherlands a person insured before entering service is credited during service with contributions based on his previous wages which, in France, are taken to be the average of the wages on which contributions were paid during the calendar year completed before mobilisation.

In Czechoslovakia and Great Britain and under the United States Bill, contributions are credited at a uniform rate to all persons who are protected. In Czechoslovakia the contribution is that which corresponds to the lowest wage classes, while under the United States Bill the service man or woman is insured on the basis of a wage of $160 a month. The British pension insurance legislation provides for fixed rates of contributions and pensions, independent of wages, and the contributions credited to service men and women have the same effect as those credited to insured civilians; the rates of pensions do not vary with the number of contributions credited, but those credited during service count towards the minimum number prescribed as qualification for pensions and towards the maintenance of that qualification once it is acquired.

Maintenance of Rights after Discharge.

All pension insurance laws provide for the maintenance of the validity of contributions indefinitely or for a certain time after the payment of contributions ceases.

In France, for old-age pensions, and in the Netherlands, for all pensions, contributions retain their validity indefinitely. Under Polish legislation contributions retain their validity for all pensions as long as unemployment lasts. Under the United States Bill, in conjunction with the Social Security Act, the wages credited to service men and women retain their validity for old-age and survivors' pensions until the pension is claimed, if at that time wages have been credited for half the period having elapsed since the insured person reached the age of twenty-one.

Under the Czechoslovak legislation, pension insurance contributions retain their validity for a maximum period of sixty months of unemployment. In Great Britain the period of validity varies between 1½ and 2½ years from the date of the last contribution. In France the period of validity is eighteen months with respect to contributions credited to invalidity insurance.

Financial Provisions.

In Great Britain and the Netherlands the pension insurance contributions for members of the armed forces are paid under the same conditions as for civilian insured persons. Consequently the normal contribution is equally shared between the State (as employer) and the insured person in Great Britain, and is paid entirely by the State (as employer) in the Netherlands. However, men and women officers in Great Britain must pay the entire contribution.

Under Czechoslovak law the State pays to the social insurance institutions an inclusive sum estimated to cover the joint contributions for all persons undergoing military service.

The French law provides for the crediting of contributions, but does not indicate how the resulting liabilities are to be met; no provision is made for the actual payment of contributions to the insurance institution. The United States Bill authorises the payment of the joint contributions out of general taxation to the Federal Old-Age and Survivors' Insurance Fund.

SICKNESS INSURANCE

Since there is, as a rule, no qualifying period, or only a very short one, for the benefits of sickness insurance, there are no acquired rights to be maintained during service in the armed forces. For the same reason, the protection of sickness insurance lapses with the termination of insurable employment or within a few weeks thereafter.

Only in Great Britain is a substantial qualifying period (104 weeks) prescribed for entitlement to the full benefits of sickness insurance. The reason is that the National Health Insurance Acts provide in case of permanent disablement a cash benefit which is a species of invalidity pension, as well as sickness and medical benefits. The existence of this qualifying period gives rise to an equally substantial period of protection for persons leaving insurable employment.

In Great Britain all service men and women below commissioned rank, and also temporary officers who were insured when they entered the service, are compulsorily insured under the National

Health Insurance Act for the purpose of maternity benefits for their wives, or themselves during service, and for the purpose of endowing them on discharge with insurance rights with respect to sickness, maternity, medical and disablement benefit. A special reduced rate of contribution is paid by the State for these purposes on behalf of non-commissioned ranks and by officers on their own behalf. The rates of contributions and the benefits vary only as between men and women, and, once the qualifying period is completed, the rate of benefit does not increase with the payment of additional contributions. After discharge the contributions retain their validity for a period varying from 1½ to 2½ years.

Although there is no scheme of compulsory sickness insurance in the United States, provision is made under the United States Bill for the payment of an unemployment allowance at a uniform rate to a person who falls ill while unemployed within a year after discharge. The cost is borne by the Federal Government.

Conclusions

Pension Insurance

The provision made in the Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933, for continuing the pension insurance of persons already insured who are called up for military service, is insufficient.

It is desirable that provision should also be made for the pension insurance of persons who were not already insured, in order that, on discharge from military service, they may be as well protected as if they had been engaged in civil employment.

Where pension insurance is intended mainly for wage earners, and non-manual workers earning more than a certain moderate income are excluded, it might have been considered unnecessary to provide for the pension insurance of officers. However, the fact that officers are now recruited from all social classes makes it desirable to bring temporary officers within the protection of pension insurance.

Where, as in most of the countries concerned, contributions and pensions vary with the basic remuneration of the insured person, the question arises: on what remuneration should the contributions for service men and women be based? It is suggested that, as under Czechoslovak law and the United States Bill, a uniform basic remuneration, comparable to the prevailing rate of wages for industrial workers, should be adopted for all service men and women. But just as persons called up for military service may receive special assistance in order to help them to keep up payments on their life insurance policies, so they may be enabled to continue their pension insurance on the basis of their last insurable remuneration in civil life, if this is higher than the uniform basic rate.

All pension insurance contributions should retain their validity for at least twelve months after discharge, and for more than twelve months if for any reason, such as illness, training or unemployment, an individual has not had the opportunity of becoming resettled.

Sickness Insurance

Payment of contributions during service adds nothing to the protection of the service man or woman in case of sickness during service. It is, however, important that the wives and children of service men should continue to be entitled to the maternity and medical benefits of insurance; and provision has been made quite generally to this effect.

What is needed by service men and women on their discharge is title to sickness insurance benefits, for themselves and their dependants, until they have the opportunity to enter insurable employment or are otherwise resettled. The period of protection should in no case be less than twelve months.

It is suggested that the rate of sickness benefit payable to discharged service men and women should be calculated on a uniform basic remuneration, which might well be the same as that adopted for calculating the pension insurance contributions credited to them.

Financial Provisions

In Great Britain half the pension insurance contribution is charged to the non-commissioned service man or woman, and the whole of it to commissioned ranks. In other countries the State bears the whole liability.

If the economic situation of service men and women and especially of their dependants is markedly less favourable than that which they might have expected to occupy had they remained in civil life, it would seem that the State should bear the cost of continuing their pension insurance and endowing them with sickness insurance rights on discharge. When, however, the economic situation of any group of service men and women can be considered equivalent to that which they would have occupied in civil life, it can be agreed that they should pay a portion of the contribution.

PROPOSED RECOMMENDATION

PROPOSED RECOMMENDATION CONCERNING INCOME SECURITY AND MEDICAL CARE FOR PERSONS DISCHARGED FROM THE ARMED FORCES AND ASSIMILATED SERVICES AND FROM WAR EMPLOYMENT

The General Conference of the International Labour Organisation,

Having been convened at Philadelphia by the Governing Body of the International Labour Office, and having met in its Twenty-sixth Session on 20 April 1944, and

Having decided upon the adoption of certain proposals with regard to income security and medical care for persons discharged from the armed forces and assimilated services and from war employment, which is included in the third Item on the Agenda of the Session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts, this day of May, of the year one thousand nine hundred and forty-four, the following Recommendation which may be cited as the Social Security (Armed Forces) Recommendation, 1944:

Whereas persons discharged from the armed forces and assimilated services have been obliged to interrupt their careers and will be faced with initial expenditure in re-establishing themselves in civil life;

Whereas persons discharged from the armed forces or assimilated services or from war employment may in certain cases remain unemployed for a time before obtaining suitable employment;

Whereas it is undesirable that persons discharged from the armed forces and assimilated services should find themselves at a disadvantage in respect of pension insurance as compared with persons who have remained in civil employment, and the Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933, while providing for the maintenance of the rights under pension insurance schemes of persons engaged in military service who were insured before beginning such service, does not provide for the attribution of any rights under such schemes to persons not insured before entering military service;

PROJET DE RECOMMANDATION CONCERNANT LA SECURITE DU REVENU ET LES SOINS MEDICAUX POUR LES PERSONNES CONGEDIEES DES FORCES ARMEES ET SERVICES ASSIMILES ET DES EMPLOIS DE GUERRE

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Philadelphie par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 20 avril 1944 en sa vingt-sixième session,

Après avoir décidé d'adopter diverses propositions relatives à la sécurité du revenu et aux soins médicaux pour les personnes congédiées des forces armées et services assimilés et des emplois de guerre, question qui est comprise dans le troisième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'une recommandation,

adopte, ce jour de mai mil neuf cent quarante-quatre, la recommandation ci-après, qui sera dénommée Recommandation sur la sécurité sociale (forces armées), 1944:

Considérant que les personnes congédiées des forces armées et services assimilés ont été obligées d'interrompre leur carrière et auront à faire face à une dépense initiale pour s'établir à nouveau dans la vie civile;

Considérant que les personnes congédiées des forces armées et services assimilés et des emplois de guerre risquent, dans certains cas, de rester en chômage pendant quelque temps avant d'obtenir un emploi convenable;

Considérant qu'il n'est pas désirable que les personnes congédiées des forces armées et services assimilés se trouvent désavantagées dans les régimes d'assurance-pension par rapport aux personnes qui sont restées dans un emploi civil, et que la Recommandation sur l'assurance-invalidité-vieillesse-décès, 1933, tout en prévoyant le maintien, pendant les périodes de service militaire, des droits à pension des personnes qui étaient assurées avant l'entrée en service, ne prévoit l'attribution d'aucun droit, en vertu de ces régimes, aux personnes qui n'étaient pas assurées avant leur entrée au service militaire;

Whereas it is desirable that persons discharged from the armed forces and assimilated services should be protected by insurance in respect of sickness occurring between their discharge and their re-establishment in civil life by entry into insurable employment or otherwise; and

Whereas it is necessary to make equitable provision in regard to these matters;

The Conference recommends the Members of the Organisation to apply the following principles and to communicate information to the International Labour Office, as requested by the Governing Body, concerning the measures taken to give effect to these principles:

I. Mustering-out Grant

1. Persons discharged from the armed forces and assimilated services should receive on their discharge a special grant, which may be related to their length of service and should be paid in the form of a lump sum, in the form of periodical payments, or partly in the form of a lump sum and partly in the form of periodical payments.

II. Unemployment Insurance and Assistance

2. Persons discharged from the armed forces and assimilated services should, so far as is administratively practicable, be treated under unemployment insurance schemes as insured contributors in respect of whom contributions have been paid for a period equal to their period of service. The resulting financial liability should be borne by the State.

3. Where persons discharged from the armed forces and assimilated services or from war employment exhaust their right to benefit before suitable employment is offered to them, or are not covered by an unemployment insurance scheme, an allowance financed wholly from State funds should be paid, irrespective of need, until suitable employment is available.

III. Pension and Sickness Insurance

4. (1) Where a compulsory insurance scheme providing pensions in case of invalidity, old age or death and covering the majority of the working population is in force, periods of service in the armed forces and assimilated services should be reckoned as contribution periods for the purpose of determining whether any requirement in regard to a minimum qualifying period has been fulfilled.

Considérant qu'il est désirable que les personnes congédiées des forces armées et services assimilés soient protégées par l'assurance en ce qui concerne les maladies dont elles peuvent être atteintes entre leur mise en congé et leur réinstallation dans la vie civile à la suite de leur entrée dans un emploi assujetti à l'assurance ou de toute autre manière;

Considérant qu'il est nécessaire de prévoir des mesures équitables pour faire face à ces diverses éventualités;

La Conférence recommande aux Membres de l'Organisation d'appliquer les principes suivants et de communiquer au Bureau international du Travail les informations que le Conseil d'administration décidera de demander sur les mesures prises pour mettre ces principes en application:

I. Allocation de démobilisation

1. Les personnes congédiées des forces armées et services assimilés devraient recevoir, au moment de leur mise en congé, une allocation spéciale dont le montant pourrait être proportionné à la durée de leur service et dont le paiement devrait prendre la forme soit d'un versement global, soit de versements périodiques, soit d'un versement global combiné avec des versements périodiques.

II. Assurance et assistance chômage

2. Les personnes congédiées des forces armées et services assimilés devraient, pour autant que cela est administrativement possible, être traitées, pour l'application des systèmes d'assurance-chômage, comme des travailleurs assurés pour le compte desquels des cotisations auraient été payées pendant une période égale à la durée de leur service. Les charges financières qui en résultent devraient être assumées par l'Etat.

3. Si des personnes congédiées des forces armées et services assimilés ou d'emplois de guerre épuisent leur droit à indemnité avant qu'un emploi convenable leur ait été offert ou si elles ne sont pas couvertes par un système d'assurance-chômage, une allocation entièrement à la charge de l'Etat devrait leur être accordée, indépendamment de tout état de besoin, jusqu'à ce qu'un emploi convenable soit disponible.

III. Assurance-pension et assurance-maladie

4. 1) Lorsqu'un système d'assurance obligatoire, prévoyant des pensions en cas d'invalidité, de vieillesse ou de décès et couvrant la majorité de la population active, est en vigueur, la durée de service accomplie dans les forces armées et services assimilés devrait être considérée comme période de cotisation pour déterminer si les conditions relatives à l'accomplissement d'un stage d'assurance sont remplies.

(2) Where the rate of pension varies with the number of contributions credited to the insured person, the period of service should be taken into account for the purpose of increasing the rate of pension.

(3) Where contributions are graduated according to remuneration, contributions should be credited in respect of periods of service on the basis of a uniform hypothetical remuneration of reasonable amount: Provided that contributions credited to persons insured immediately before beginning their service may be based on the remuneration which they were receiving at that time if such remuneration was higher than the hypothetical remuneration.

(4) Persons discharged from the armed forces and assimilated services should retain, during the period between their discharge and the time at which they can be considered to be re-established in civil life, their rights in respect of the contributions credited to their account; in no case should this period be less than twelve months.

5. (1) Where a compulsory insurance scheme providing sickness, maternity and medical benefits and covering the majority of the working population is in force, persons discharged from the armed forces and assimilated services should be entitled to such benefits in respect of sickness or childbirth occurring during the period between their discharge and the time at which they can be considered to be re-established in civil life; in no case should this period be less than twelve months.

(2) Where the compulsory insurance scheme provides maternity and medical benefits for the dependants of insured persons, discharged persons protected by the scheme should be entitled to such benefits for their dependants.

(3) Where the rate of sickness benefits is proportional to the remuneration of the insured person, the rate of benefit payable to discharged persons should be based on a uniform hypothetical remuneration of reasonable amount.

6. The State should bear the liability created by crediting persons serving in the armed forces or assimilated services with pension insurance contributions and insuring them against sickness pending their re-establishment in civil life: Provided that, where the pay of any class of such persons may, having regard to the value of their subsistence and of dependants' allowances, be considered at least equivalent on the whole to the wages prevailing in industry, a portion of the pension insurance contribution may be deducted from their service pay.

2) Lorsque le taux de pension varie en fonction du nombre des cotisations portées au compte de l'assuré, la durée de service devrait être prise en compte pour la majoration du taux de pension.

3) Lorsque les cotisations sont graduées d'après la rémunération, des cotisations devraient être portées au compte de l'intéressé, au titre de la durée de son service, sur la base d'une rémunération fictive uniforme d'un montant raisonnable. Toutefois, les cotisations portées au compte d'une personne qui était assurée immédiatement avant le début de son service pourront être basées sur la rémunération qu'elle recevait alors, si cette rémunération était plus élevée que la rémunération fictive.

4) Les personnes congédiées des forces armées et services assimilés devraient conserver, durant la période comprise entre leur mise en congé et la date à laquelle elles peuvent être considérées comme réinstallées dans la vie civile, les droits découlant des cotisations portées à leur compte; en aucun cas, cette période ne devrait être inférieure à douze mois.

5. 1) Lorsqu'un système d'assurance obligatoire, prévoyant des indemnités de maladie, de maternité et une assistance médicale et couvrant la majorité de la population active, est en vigueur, les personnes congédiées des forces armées et services assimilés devraient avoir droit à ces prestations en cas de maladie ou d'accouchement survenant au cours de la période comprise entre leur mise en congé et la date à laquelle elles peuvent être considérées comme réinstallées dans la vie civile; en aucun cas cette période ne pourrait excéder douze mois.

2) Lorsque le système d'assurance obligatoire prévoit des indemnités de maternité et une assistance médicale en faveur des ayants droit des assurés, les personnes protégées par le système devraient bénéficier de ces prestations en faveur de leurs ayants droit.

3) Lorsque le taux de l'indemnité de maladie est proportionnel à la rémunération de l'assuré, le taux de l'indemnité payable aux personnes congédiées devrait être basé sur une rémunération fictive uniforme d'un montant raisonnable.

6. L'Etat devrait supporter la charge constituée par les cotisations d'assurance-pension portées au compte des personnes servant dans les forces armées et services assimilés et par leur assurance en cas de maladie jusqu'à leur réinstallation dans la vie civile. Toutefois, lorsque la solde d'une catégorie de ces personnes peut, compte tenu du coût de leur subsistance ainsi que des allocations familiales, être considérée comme étant au moins équivalente, dans l'ensemble, au salaire usuel dans l'industrie, une fraction de la cotisation d'assurance-pension peut être déduite de cette solde.

SECTION II

INTERNATIONAL ADMINISTRATIVE CO-OPERATION TO PROMOTE SOCIAL SECURITY

COMMENTARY ON THE PROPOSED RESOLUTION

Social security—the political and economic environment which makes it possible and the income security and medical care provisions which make it actual—will shortly be in the forefront of the post-war policies of all Members. It will be a question for some Members of recasting and extending their social insurance and assistance schemes, but others will be entering the social security field with little or no previous experience. It will evidently be the duty of the International Labour Office to assist the latter group especially, to the utmost of its ability. It is not enough for the Conference to establish international standards for social security services; it is also necessary to make help available to those Members which lack the experience and means to translate for themselves these standards into functioning legislation.

Despite its very slender resources, the Office has been able to give considerable technical assistance to a number of Members and, during the last few years, particularly to Members on the American continent. In every case the Office has received warm acknowledgments of the value of the services it was able to render from the Governments concerned. Social insurance has been spreading and developing with great rapidity in the Western Hemisphere and no doubt the technical assistance which the Office has rendered, as indicated above in a number of cases, has played its part in contributing to this satisfactory result. It must be remembered, however, that during the war the Office has been obliged by circumstances to confine its work mainly to the Americas, but that later on it will again have the world as its field.

In these circumstances it is proposed to appeal to the sense of mutual responsibility among Members and to seek the co-operation of those which are more experienced, in order to supply technical help to others which are about to introduce social security measures.

The sphere in which an international staff should be especially

competent is in making available to Governments or social security administrations information on the legislation adopted or proposed in other countries, and on the experience of the working of social security schemes in different parts of the world as revealed by the studies constantly made of the reports which they themselves prepare. Such information may frequently be of the greatest value either as guidance or as suggestion as to what might be suitable measures in the consulting country. But it must be the exception, rather than the rule, that international officials should be fully conversant with every variety of detailed procedure followed in social security administration. Up to the present, Members have developed their administrative procedures largely in isolation. Some of these procedures must be more efficient and economical than others, while some are very closely conditioned by the provisions of the law to which they give effect or by national tradition. When a Member is about to put into force a new social insurance scheme or one which has been redesigned, the experience of another Member which has already a similar scheme in operation is likely to be of great value to the former. Accordingly it is suggested that the Office should seek the co-operation of Members in making available services of experts who are prepared to undertake missions to another Member on such terms as may be agreeable to the two Members concerned.

The selection of an expert who might be invited in this way to lend assistance to a Member would, of course, be determined by the nature of his experience in the administration of one or other branch of social insurance and by considerations of language. The Office has in mind such services as the devising of administrative forms and procedures for the collection of contributions and the payment of benefits, actuarial and financial planning, and the organisation of medical care services. A few such missions have already been undertaken among American Members with good results. It is hardly necessary to add that experts accomplishing such a mission not only impart their own experience, but also gain a fresh outlook and knowledge which may well be profitable for their work in their own countries. It is believed that missions from one Member to another, arranged in the way proposed, are likely to create, through personal contact, a sentiment of professional comradeship which, permeating the international stratum of social security administration, will contribute its peculiar quota to the development of international goodwill and understanding.

Besides the loan of experts by one Member to another, the proposed resolution contains several suggestions for the advancement of social security administration by the simultaneous co-operation of all Members or groups of Members interested. These suggestions relate to statistics and arrangements for courses of higher studies.

It will be remembered that much has already been accomplished towards the establishment of uniform methods of compiling certain branches of labour statistics by the International Labour Conference and by expert conferences and committees in which the Office was represented. It is now suggested that the same policy should be followed in relation to statistics of the working of social security services, and statistics of morbidity and invalidity in particular, with a view to facilitating the proper direction of preventive programmes.

The Inter-American Conference on Social Security, the first session of which was held in Santiago de Chile in September 1942 and the statute of which has been approved by the Governing Body, was created in order "to facilitate and develop the co-operation of the social security administrations and institutions" of the American countries in concert with the International Labour Office. At its Santiago session that Conference adopted detailed resolutions concerning the unification of morbidity statistics, the organisation of international enquiries and conferences, participation in experiments of general interest, the establishment of scholarships, and the issue of studies.

The rapid growth of social security legislation in many countries, particularly in Latin America, has also raised the problem of securing a sufficient supply of officials with the necessary background of technical knowledge for their administration. A suggestion has therefore been made that courses of lectures should be arranged from time to time, possibly with the collaboration of university authorities, in the various countries, and it has also been suggested that the International Labour Office might be able to furnish assistance in the way of finding lecturers with the necessary technical qualifications and knowledge. Here again it is unlikely that the Office would ever be able to meet in any adequate manner calls of this kind from its own restricted staff, and the co-operation of Member States on the lines suggested above for a somewhat different purpose would appear to afford the most practical solution.

The Office considers that these objectives are worthy of general international recognition and support, that similar co-operative activities should be encouraged in other continents, and that it should endeavour as far as possible to co-ordinate the whole movement.

It is accordingly suggested that the Conference should adopt a resolution on these subjects and a draft is given herewith which might be taken as a basis of discussion.

PROPOSED RESOLUTION

PROPOSED RESOLUTION ON INTERNATIONAL ADMINISTRATIVE CO-OPERATION TO PROMOTE SOCIAL SECURITY

Whereas the Income Security Recommendation, 1944, and the Medical Care Recommendation, 1944, adopted by the present Conference, recommend Members of the Organisation to apply certain principles, as rapidly as national conditions allow, in developing their social security schemes; and

Whereas mutual assistance in social security administration is one of the forms of collaboration between nations calculated to promote the progressive development in all countries of comprehensive social security schemes providing for income security and medical care on the basis of these Recommendations; and

Whereas the International Labour Office has co-operated with Members of the Organisation in an advisory capacity in the planning and development of social security schemes by means of expert missions, and it is now desirable to take further measures to make the experience of social security administration gained by Members individually available through the International Labour Office to other Members about to introduce social security schemes or to amend their existing schemes; and

Whereas the Inter-American Conference on Social Security adopted at its first session, held at Santiago de Chile in 1942, resolutions favouring co-operation among social security administrations and institutions with a view to the unification of statistics of medical care and the encouragement of research and technical studies:

The Conference requests the International Labour Office:

(*a*) to make arrangements with Members of the Organisation whereby the services of one or more of the experts of one Member in particular branches of social security administration who may be available for service abroad and suitable in any particular case, having regard to their technical experience and linguistic qualifications and to the nature of the service to be rendered, may be placed at the disposal of another Member on terms agreeable to the Members concerned;

(*b*) to seek the co-operation of Members with a view to:

(i) securing the comparability of statistics of the working of social security services;

(ii) promoting collaboration among social security administrations in the organisation of courses of higher studies.

PROJET DE RESOLUTION CONCERNANT LA COOPERATION ADMINISTRATIVE INTERNATIONALE POUR PROMOUVOIR LA SECURITE SOCIALE

Considérant que la recommandation concernant la garantie des moyens d'existence, 1944, et la recommandation concernant les soins médicaux, 1944, adoptées par la présente Conférence, recommandent aux Membres de l'Organisation d'appliquer certains principes, aussi rapidement que les conditions nationales le permettront, en mettant en œuvre leurs régimes de sécurité sociale;

Considérant que l'aide mutuelle dans l'administration de la sécurité sociale est l'une des formes de collaboration entre nations qui sont propres à favoriser le développement graduel, en tous pays, de régimes généraux de sécurité sociale assurant la garantie des moyens d'existence et les soins médicaux sur la base de ces recommandations;

Considérant que le Bureau international du Travail a collaboré avec des Membres de l'Organisation, en qualité de conseiller, à l'élaboration et à la mise en œuvre de plans de sécurité sociale, au moyen de missions d'experts, et qu'il est d'ores et déjà désirable de prendre de nouvelles mesures afin d'assurer par l'entremise du Bureau international du Travail, le bénéfice de l'expérience acquise par certains Membres en matière d'administration de la sécurité sociale aux autres Membres qui se préparent à instituer de nouveaux régimes de sécurité sociale ou à modifier les régimes existant chez eux;

Considérant que la Conférence interaméricaine de sécurité sociale a adopté à sa première session, tenue à Santiago du Chili en 1942, des résolutions tendant à favoriser la coopération entre les administrations et institutions de sécurité sociale en vue d'uniformiser les statistiques de soins médicaux et d'encourager les recherches et les études techniques;

La Conférence invite le Bureau international du Travail:

a) à conclure avec des Membres de l'Organisation des arrangements en vue de mettre les services d'un ou de plusieurs experts d'un Membre, versés dans certaines branches de l'administration de la sécurité sociale, qui peuvent être disponibles pour servir à l'étranger et que leur expérience technique et leurs qualifications linguistiques ainsi que la nature du service à accomplir désignent pour un cas particulier, à la disposition d'un autre Membre dans des conditions convenant aux Membres intéressés;

b) à rechercher la collaboration des Membres en vue:

i) d'assurer la comparabilité des statistiques relatives au fonctionnement des services de sécurité sociale;

ii) d'encourager la collaboration entre les administrations de sécurité sociale pour l'organisation de cours d'études supérieures.

SECTION III

MAINTENANCE OF DISPLACED PERSONS' PENSION RIGHTS

Introduction

In the course of World War II tens of millions of individuals have left the countries in which they were residing, either as refugees fleeing from invading armies, or as ethnic groups of deportees, or as bands of workers recruited in their country of residence by an occupying Power or a friendly Power for employment in its territory, in order to take the place of its workers mobilised for military service.[1]

Some part of this multitude of displaced persons, and the greater part of the third-mentioned category, have been transferred from countries possessing extensive schemes of compulsory insurance against invalidity, old age and death, to others in which similar schemes are in operation. It is with these individuals and groups, most of whom are employed for the purposes of the German war economy, that we are here concerned.

It may be recalled that, under the great majority of such schemes, the right to an invalidity, old-age, or widow's or orphan's pension is acquired by the regular payment of contributions over a minimum number of years, and, as a rule, until the event giving rise to benefit occurs. If the payment of contributions is interrupted, the rights in course of acquisition by the insured person commonly lapse. A person who leaves a country in which he has been insured will thus lose credit for the contributions he has paid there. In the country which he enters he may again become liable to insurance, but he may not be able to complete the contribution period prescribed as a qualification for the pension there, and even if he does, the pension is likely to be small. Again, under the laws of most countries, the pension of a person leaving the country under whose scheme it was awarded may be suspended, in part if not in whole, during his absence abroad.

[1] Eugene M. Kulischer: *The Displacement of Population in Europe* (International Labour Office, Montreal, 1943).

The maintenance of the rights in course of acquisition, or acquired, by displaced workers under the pension insurance schemes to which they have successively contributed can only be achieved by the joint action of the countries concerned.

The problem, which is a necessary consequence of migration between countries possessing pension insurance schemes, existed on a much smaller, but still substantial, scale before World War II. It was, however, on the way to complete solution through the development of special bilateral treaties, culminating in the adoption of an international labour Convention.

The treaties do not apply to the majority of the millions of workers recruited by Germany, nor does the Convention, to which Germany is not a party; the rights of these workers are maintained, if at all, by agreements of a precarious nature. For these displaced workers, the technique used in the treaties and the Convention does not appear to be adequate, and a new method of securing their rights is accordingly proposed. In other countries the concentration of displaced workers is much less intense, nor is their employment there necessarily temporary, and in their case pension rights can be best secured by the existing technique.

We shall briefly recall the characteristics of the bilateral treaties and the international labour Convention, and shall sketch the present position of foreign workers in Germany and the steps hitherto taken by Germany and the other countries concerned to maintain the rights of these workers. Conclusions will then be drawn from these considerations as to the nature of the international regulations which appear to be necessary in order to afford proper safeguards for the pension rights of displaced workers.

Bilateral Treaties and International Convention

In order to maintain the pension rights of migrants, numerous treaties were concluded between European countries during the inter-war period, and, the terms of these treaties having become more or less standardised, the International Labour Conference was able in 1935 to adopt the Maintenance of Migrants' Pension Rights Convention[1], which is based on the technique followed in the later treaties.

Essentially the technique is very simple. As we have already mentioned, the great majority of pension insurance schemes require that a person, in order to qualify for a pension, shall have completed a minimum number of years of insurance, and thereafter shall have contributed with reasonable regularity until the claim

[1] *The International Labour Code*, Articles 586-608. Reproduced in Appendix I.

is presented. The treaties and the Convention provide that the insurance institutions of each country shall, when deciding whether the qualifying conditions are satisfied under their respective schemes, add together the insurance periods spent by the claimant in both countries. If the claimant is found to be qualified under these conditions in one country only, the institution of that country grants a benefit based on the contributions paid under its scheme, the insurance institution of the other country incurring no liability. If, on the other hand, the claimant is found to be qualified under the schemes of both countries, a joint pension is payable by the two insurance institutions concerned.

Pensions, in Europe at least, usually consist of a fixed basic component, the right to which is acquired if the event giving rise to benefit occurs immediately after the qualifying period is completed, and a variable component varying with the number and amount of the contributions paid in respect of the insured person concerned. Each country pays a share of the basic component equal to the ratio between the time spent under its scheme to the total time spent under all the schemes to which the individual has been subject. Each country pays also the whole of the variable component the right to which was acquired by contributions paid under its scheme. As regards the maintenance of acquired rights, that is to say, the right to receive a pension after leaving the country in which it was granted, the treaties and the Convention simply provide that any restriction in the payment of pensions in case of residence abroad, but in the territory of one of the parties, shall be removed.

The Convention and most of the later treaties—those of Germany with Hungary and Italy are exceptional in this respect—allow no distinction between insured persons on the ground of nationality. Accordingly, any person, irrespective of nationality, who is or has been insured under any compulsory pension insurance scheme of one, two (or more) parties, is entitled to the maintenance of his rights in case of acquisition and acquired rights, so long as he resides in the territory of one of the parties.[1]

Treaties embodying this technique have been concluded by the following countries (dates of signature in brackets):

AUSTRIA: with Czechoslovakia (1931), France (1930), Germany (1930) and Yugoslavia (1931);
BELGIUM: with the Netherlands (1931);
CZECHOSLOVAKIA: with Austria (1931), Germany (1931) and Yugoslavia (1936);

[1] Cf. INTERNATIONAL LABOUR OFFICE: *Maintenance of the Rights in Course of Acquisition and the Acquired Rights of Migrant Workers under Invalidity, Old-age and Widows' and Orphans' Insurance* (Geneva, 1934).

FRANCE: with Austria (1930), Germany (1932), Italy (1932), Poland (1920) and Spain (1932);
GERMANY: with Austria (1930), Czechoslovakia (1931), France—Saar (1935), Hungary (1941), Italy (1940), Poland (1931) and Yugoslavia (1928);
HUNGARY: with Germany (1941);
ITALY: with France (1932), Germany (1940) and Yugoslavia (1925);
NETHERLANDS: with Belgium (1931);
POLAND: with France (1920) and Germany (1931);
SPAIN: with France (1932);
YUGOSLAVIA: with Austria (1931), Czechoslovakia (1936), Germany (1928) and Italy (1925).

It will be seen that central and western Europe were already well covered by bilateral treaties by 1932. There are also special treaties on miners' insurance between Belgium and France (1927), Belgium and Poland (1931), and France and Poland (1929).

Thus the maintenance of the rights of individuals who moved from one country to another during the pre-war period had, in Europe at least, been largely secured by bilateral treaties, most of which provided that rights already in course of acquisition, and rights already acquired should not lapse with the denunciation of the treaty. Accordingly, whether these treaties are in force or not, the rights acquired under them subsist.

How many of these treaties are actually in force or applied at the present time, it is impossible to say. The treaties concluded between Germany with Hungary and Italy[1] during the war are presumably in operation, but one or both of the parties to the other treaties has either been occupied by Germany or been dismembered (Austria, Belgium, Czechoslovakia, France, Netherlands, Poland, Yugoslavia).

The Maintenance of Migrants' Pension Rights Convention, 1935, came into force on 10 August 1938, and has up to the present been ratified by Hungary, the Netherlands, Poland and Spain, of which countries two are occupied by Germany. It is still in force for all four countries, none of which has denounced it, and, formally at least, it secures the pension rights of any worker from one country who has been insured in any of the others at any time since the outbreak of the present war. It may be that it is actually applied as between Hungary and Spain. As between any other pairs of these four countries, the settlement of any claims which may have arisen during the war will evidently have to await the resumption of control of their territories by the Governments of the Netherlands and Poland.

Massive displacements of populations with respect to the pension scheme to which they were subject had occurred before the out-

[1] A summary of the German-Italian Treaty is given in Appendix II.

break of World War II, when Austria and the Sudetenland were absorbed by Germany, but provision has been made for the maintenance of the pension rights of populations affected, by the German Order of 22 December 1938 concerning the introduction of German social insurance in Austria, and by the Agreement between Germany and the Protectorate of Bohemia-Moravia of 25 April 1940.[1] Should these areas be later detached from Germany and resume their previous status, the provisions of the instruments just mentioned could, if necessary, be applied in the reverse direction.

Position of Non-German Workers in Germany or German-Controlled Areas

Recruitment

Labour has been sought by Germany during the war from all the countries within its sphere of influence, as well as from areas occupied by it. The principal sources of workers have been the U.S.S.R. (at least 1,500,000), Poland (1,300,000), France (400,000), Italy (350,000), Czechoslovakia (320,000), Belgium (300,000), the Netherlands (300,000) and Yugoslavia (250,000); from 20,000 to 50,000 each have been obtained from Bulgaria, Denmark, Greece and Hungary. Such was reported to be the position in the middle of 1943. The numbers may since have increased considerably: the figure for workers from France in particular had risen to 800,000 by June 1943.[2]

Foreign workers are recruited for employment in Germany by agencies of the German employment service and are distributed by the service according to the strategical importance of the need for labour in the various industries and areas.

Except perhaps in the case of Eastern workers, who, broadly speaking, are workers obtained from the pre-war territory of the U.S.S.R., recruitment was nominally voluntary at the outset, but in some occupied areas, and even in unoccupied France, it later became compulsory, both in fact and in law. Again, with the possible exception of Eastern workers, the engagement of a worker is effected by his signature of a contract of employment which sets forth in detail his wage and working conditions. The engagement takes place at the German recruiting agency or at an agency of his country of residence acting on behalf of the latter. Except for Poles, Jews and Eastern workers, the principle adopted in all labour treaties of equality of treatment for immigrant and national workers is supposed to be followed.

[1] A summary of the Agreement is given in Appendix III.
[2] Eugene M. Kulischer, *op. cit.*, p. 162.

Poles may receive the same basic wage as Germans, but are subject to a special tax and are denied various privileges and extra allowances. The position of Jews appears to be similar.

Eastern workers are treated much as if they were prisoners of war. They are paid a specially reduced wage equal to about one quarter of the wage of a comparable German worker, but are fed and lodged in barracks at their employer's expense. The employer pays a tax equal to the difference between the German wage and the total of the Eastern worker's wage and his maintenance charge.

Foreign workers who have been recruited by German agencies are allowed to send their savings home to their families, the sums being transmitted through the employer, who carries out the formalities prescribed by the competent German bank; no permission from the foreign exchange control authorities is required.

Position in Germany

The German pension insurance system (general scheme, and special schemes for salaried employees and miners) applies to foreigners employed in Germany in the same way as to Germans. As regards Poles and Jews, however, this equality of treatment appears to be provisional.

Position in German-Controlled Areas

The German pension insurance system is the sole system in force in Alsace-Lorraine[1], Luxemburg[2] and the Incorporated Eastern Areas[3]—that is, the western part of Poland. In these areas it has replaced for their inhabitants the pre-war systems governed by the legislation of France, Luxemburg and Poland, respectively. In effect these people are subject to a foreign pension insurance system. The assimilation of their rights in course of acquisition or acquired under the pre-war systems, to rights under the German system, has been achieved by elaborate German legislation for each area. Aside from these transitional provisions, the inhabitants of these areas are insured on the same terms as Germans. There is an important exception, however. Poles and Jews in the Incorporated Eastern Areas, though paying the normal contributions, have no legal right to benefit, although Poles may receive relief.

German-recruited foreign workers employed in these areas are insured under the German system on the same terms as Germans.

In Belgium, the Netherlands and Northern France[4], the German

[1] See Appendix IV.
[2] See Appendix V.
[3] See Appendix VI.
[4] See Appendix VII.

system is in force for Germans, or persons of German race, entering these countries after the occupation, and for German-recruited workers other than residents of the country concerned. Workers who are residents of the occupied country are, irrespective of nationality, insured under its pension insurance system in accordance with its legislation. Poles, Jews and Eastern workers who are placed in the occupied areas by the German authorities and are employed there in a German undertaking are not insured at all.

In the part of Poland called the General Government, the German pension insurance system is in force for foreigners other than Poles and Jews.[1] The Polish pension insurance system continues to operate, but in a mutilated form: Poles and Jews alone belong to it, paying the normal contributions, but, as in the Incorporated Areas, having no legal right to benefit.[2]

Maintenance of Rights of Non-German Workers Leaving Germany or German-Controlled Areas

Maintenance of Rights in Course of Acquisition

Under treaties or agreements concluded by Germany with the Governments or collaborating authorities of Hungary, Italy, Bulgaria, Croatia, France, the Netherlands and Rumania, more or less detailed provision has been made for the maintenance of the rights in course of acquisition by foreign workers subject to the German pension insurance system. It is not known whether any agreements have been entered into by Germany with the collaborating authorities of Belgium, Denmark or Norway.

Quite different techniques are used for maintaining rights in course of acquisition in the treaties and agreements, respectively.

The treaties with Hungary and Italy apply only to the nationals of the parties, but do so irrespective of the circumstances in which the national of one became employed in the territory of the other. The technique applied in the treaties with Hungary and Italy has already been summarily explained; it corresponds to that followed in the Maintenance of Migrants' Pension Rights Convention. It secures the maintenance of rights in course of acquisition by obliging the insurance institution of each country to grant, when the event giving rise to benefit occurs, a partial pension which, roughly speaking, is equal to such proportion of the total pension as corresponds to the proportion of the time spent and of the contributions paid in the country concerned to the total time spent and the total contributions paid in both countries.

[1] See Appendix VIII. [2] See Appendix IX.

Of the various agreements concluded by Germany, those entered into with Bulgaria and Croatia secure the maintenance of rights in course of acquisition by any workers, irrespective of nationality, who before or after their employment in Germany are insured in Bulgaria or Croatia, as the case may be. The Rumanian agreement maintains such rights in respect of workers recruited by German agencies without regard to their nationality. The agreements with France and the Netherlands maintain such rights only in respect of French or Netherlands nationals recruited by German agencies.

The technique used in the agreements consists in requiring the country of origin of the worker to pay a single pension calculated according to its law, but based partly on insurance periods spent with it and partly on those spent with a German institution. The latter is liable to repay to the former the difference between the pension due in respect of insurance in the country of origin and the pension due in respect of insurance in both countries. The German institution is not called upon to make a payment until the event giving rise to benefit occurs.

Special provisions are found in all the agreements, except that with the Netherlands, for fixing the liability of the German institution. The Bulgarian, Croatian and Rumanian agreements provide that, irrespective of the actual wage earned by the workers from these countries in Germany, such workers shall be deemed to have contributed while in Germany as if they belonged to a certain wage class of the pension insurance system of the country of origin. Thus, under the Rumanian agreement, they are deemed to have contributed in the 6th wage class of the Rumanian system, the highest class being the 8th. Under the Bulgarian agreement they are deemed to have contributed in the 5th, that is, the highest, wage class of the Bulgarian system. Under the Croatian agreement a worker is deemed to have contributed in the 8th, that is, the highest, wage class, if he earned more than 24 RM a week, and in the 7th if he earned less than that amount.

In France, where the pension insurance system does not use wage classes, the French insurance institution has regard to the wage actually paid to the worker in Germany. This wage, however, is not taken into account at its full face value. For the purpose of reckoning the pension due, the actual wage is reduced by one sixth, because the purchasing power of the mark is said to be higher than the equivalent number of francs according to the rate of exchange.[1]

[1] See Appendix X.

Maintenance of Acquired Rights

According to the treaties of Germany with Hungary and Italy, a pension the right to which has been acquired under the system of either of the parties by a national of the other is not liable to suspension during his residence in his own country.

Similar provisions are found in the agreements with Bulgaria and Croatia.

The agreements with France, the Netherlands and Rumania, on the contrary, do not refer to the maintenance of acquired rights, and accordingly workers who have acquired the right to a pension in Germany cannot continue to receive it on returning to their country of origin; their dependants residing in the country of origin are similarly deprived of any benefit the right to which was acquired in Germany. Workers from Belgium, Denmark and Norway, and their dependants, appear to be in the same situation in the absence of any agreements with Germany.

CONCLUSIONS

Workers who during the war have been subjected to two (or more) national systems of pension insurance may be divided into three classes, of which the last two are constituted by displaced workers.

The first consists of the residents of territories which have been occupied by another Power—by Germany in particular—and in which the pension insurance system of that Power has been introduced or in which the national system has been essentially modified by that Power.

The second consists of the millions of workers who have been recruited for temporary employment outside their own country.

The third consists of individuals scattered as refugees about Europe and other parts of the world.

Populations of Annexed Territories

In this case a whole working population is concerned. An entire social insurance system comprising sickness, accident and possibly unemployment insurance, as well as pension insurance, with its installations and reserves, is replaced by another of different structure and scope. The new system takes over, with the installations and reserves of the old system, the liabilities of the latter. These liabilities are approximately evaluated in terms of the law of the new system, and the insured population is credited with acquired rights (pensions in payment) and rights in course of acquisition accordingly.

During the present war such substitutions have occurred notably in Alsace-Lorraine, Luxemburg and in the parts of Poland incorporated in Germany; while in the General Government of Poland, although no actual substitution of one system for another took place, radical changes have been made in the national system by the occupying Power. Similar cases of substitution had occurred immediately before World War II, when the German social insurance system was established in Austria and in Sudetenland, and earlier instances are to be found in connection with the transfer of the Saar to Germany and Upper Silesia to Poland. Fresh substitutions may be involved by changes in the sovereignty of territory resulting from the peace settlement.

It is believed that the questions involved in the maintenance of rights in course of acquisition or acquired by persons affected by such substitutions are too complex to be dealt with in a general international Convention. A perusal of the detailed measures taken by Germany to assimilate to its own system those of certain territories which it has occupied should carry conviction on this point. Each case of substitution will require careful study, in order to avoid serious errors and to assure the fullest and most equitable protection of the interests of the insured population concerned. No doubt the Convention of 1935 can supply guiding principles for any settlement of pension liabilities where these are to be shared by the institutions of two countries, but it does not indicate, for example, how the pensions of one system may be wholly assimilated to those of another or on what basis capital liabilities are to be evaluated.

Again, it may well be that, where it is a case of restoring the *status quo*, the mere reversal of the process of substitution would suffice; but if, as is quite likely, the State, on regaining possession of its territory, wishes to establish a social insurance system better adapted to present needs than its pre-war system, this simple approach to a solution is not applicable.

In these circumstances it does not appear feasible at this time to propose international regulations for the maintenance of pension rights for populations affected by the substitution of one pension system for another.

The International Labour Office might, however, undertake further study of the intricate problems arising from such substitutions with a view to developing guiding principles in readiness for any situations which may result from the peace settlement.[1]

[1] See Report on Item II: *Recommendations to the United Nations for Present and Post-War Social Policy.*

Recruited Workers

It has been estimated that already at the beginning of 1943 nearly 5 million foreign workers were employed in Germany or in countries other than their own under German control[1] and since then the number has certainly increased considerably. The pension rights of most, if not all, of these foreign workers are at present insufficiently secure.

Apart from Hungarians and Italians, none of these workers is protected by treaties. The rest of the score of nationalities involved can invoke only the so-called agreements which have been entered into between Germany and the collaborating authorities of occupied countries or other agreements of a more normal nature which have been concluded by Germany with the Governments of the smaller friendly Powers. All the agreements are of a provisional nature. Moreover, no engagements at all appear to have been entered into on behalf of workers from several of the occupied countries.

Although the treaties with Hungary and Italy were concluded at a time when mass recruitment of workers from these countries was envisaged, they use the same technique as was followed in the pre-war treaties and in the Convention of 1935. This technique leaves the financial responsibility involved in each individual case to be settled when the pension is claimed—it may be forty years after the worker returns to his home country.

The agreements use a technique which differs from that of the treaties and is somewhat better suited to the demands of the present situation. As the recruited worker, unlike the migrant worker, is expected to return to his home country, the agreements all provide that the latter country shall pay the total pension due in respect of his insurance in both countries. The insurance period spent in the home country is simply extended by the period spent in the other country, and the former calculates the entire pension according to its law alone. Moreover, under several of the agreements, all the workers are presumed, while working in Germany, to have earned the same wage irrespective of their actual earnings. However, an individual settlement between the insurance institutions concerned is still required in order to decide their respective liabilities. Even so, supposing that the hypothetical wage is a fair one, agreements might work reasonably well but for the fact that, as under the treaties, no payment is due by the German institution until a claim to pension actually arises.

Thus, both under the treaties and under the agreements the discharge of the financial obligations incurred by Germany will be spread over the next half century.

[1] Eugene M. KULISCHER, *op. cit.*, p. 162.

This is doubtless a convenience for the German insurance institutions and so may improve their capacity to discharge their debts as they fall due. The creditor institutions for their part would have no cause for complaint provided they could be sure of ultimate payment. But the proviso is vital, or rather fatal, to the effectiveness of the treaties and agreements. For it is to be feared that if the financial obligations assumed as the result of employing millions of foreign workers are not fixed as an incident of the peace settlement and discharged thereafter as expeditiously as possible, their ultimate discharge may be jeopardised.

Up to the present the large-scale recruitment of foreign workers has been undertaken only by Germany. One must not, however, lose sight of the possibility that other countries might need to import a mass of foreign labour—including German workers—in order to help in restoring war damage.

It is clear that the protection of the pension rights of foreign workers recruited by any country in the abnormal circumstances of the war and the succeeding transition period require the adoption of international regulations which have international authority behind them, are adapted to the determination and discharge of liabilities in the mass, and can be applied even if the records of insurance in the recruiting country are not available for inspection.

Other Displaced Workers

Besides foreign workers recruited for employment in Germany, there exists a smaller, but still considerable, number of workers who find themselves during the war and in consequence of it in countries other than their own, and are subject there to compulsory pension insurance. If they find themselves in Europe, many of them might have their rights maintained under such pre-war bilateral treaties as are being applied or as are revived with retrospective effect. A better safeguard for these workers, however, would be the rapid and extensive ratification of the Convention of 1935. The Convention indeed has the great advantage of securing uniformly equitable treatment for workers employed in any of the series of countries which ratifies it. The Convention serves to guarantee the maintenance of rights in a wide variety of cases which might escape any network of bilateral treaties; at the same time it does not impede the conclusion of bilateral treaties which are in harmony with it, but supplement it on points of detail.

Need for Draft Convention

Thus international regulations are necessary in order to safeguard the pension rights of foreign workers recruited for temporary employment in another country during the war, supplementing the provisions of the Convention of 1935.

Such international regulations should evidently take the form of a draft Convention to which States could adhere even if they are not Members of the International Labour Organisation. Indeed, the adhesion of Germany would be indispensable for the achievement of the principal object of the Convention.[1] But the Convention does not concern only countries which have supplied labour to Germany. It concerns all countries which possess schemes of compulsory pension insurance, even if they are little affected by the migration.

The adoption of the proposed draft Convention at the present juncture would be a token of the determination of the Members of the Organisation to pursue a generous policy of equality of treatment as between nationals and foreigners in the field of social legislation.

The design of the draft Convention should thus be inspired by the aim of securing a right which properly belongs to an individual worker as such, regardless of his race, nationality or religion. No discrimination with respect to race or religion is to be found in any of the bilateral treaties concluded before, or even during, the war. Even the distinction between nationals of the parties and nationals of other countries began to disappear after 1926, following the example set in that year by a treaty between Austria and Germany. The Convention of 1935, of course, tolerates no such discriminations.

The foregoing application of the principle of non-discrimination will naturally involve an increase in the liabilities of any country which has in the past not observed this principle in its pension insurance legislation. But any such country, it must be supposed, will be only too anxious to compensate as fully as possible for the wrong which has thereby been committed against such groups as Eastern workers, Poles and Jews.

The proposed Convention must not be interpreted, however, as an overt or covert device for imposing war reparations on any party for the benefit of another; its sole aim should be to secure for individuals, by the most expeditious methods, the application of an elementary principle, the justice of which had been recognised once and for all by the Convention of 1935.

[1] See Report on Item II: *Recommendations to the United Nations for Present and Post-War Social Policy.*

COMMENTARY ON THE PROPOSED DRAFT CONVENTION

The general object of the proposed draft Convention is to secure that any person who becomes liable to compulsory pension insurance outside his country of residence shall have his pension rights maintained, and its special object is to secure the maintenance of the pension insurance of persons recruited for employment abroad during World War II and the transitional period following it.

The Convention is open to ratification by any State, whether a Member of the Organisation or not, provided only that it possesses a broad scheme of compulsory insurance providing old-age pensions, if not invalidity and widows' and orphans' pensions as well (cf. Art. 10 of the proposed Convention and Art. 17 of the Convention of 1935).[1] This condition appears to be necessary, not only in order to secure reasonable reciprocity of obligations, but also in order that either of the techniques used in the draft Convention may be applicable.

Part I of the proposed Convention deals with workers who during the war have been recruited for employment of limited duration in a foreign country, while Part II simply lays down that the ratification of the proposed Convention shall carry with it the obligation to apply the provisions of the Convention of 1935 to other workers who are successively insured in two or more countries which ratify the proposed Convention, or who, having been awarded a pension in one country, take up residence in another. The effect of the proposed Convention is to maintain the pension rights of all persons displaced during the war with respect to the pension insurance scheme to which they were subject in their country of residence. This effect is achieved in the case of recruited workers by summary methods which operate from 1 September 1939, and in the case of other displaced workers by the provisions of the Convention of 1935.

PART I. RECRUITED WORKERS

Article 1

Article 1 states the purpose of the provision of Part I and supplies incidentally a definition of a "recruited worker".

The main purpose of Part I is to maintain both the rights in course of acquisition and the rights acquired by workers whose insurance career has been interrupted in their country of residence as the result of their recruitment, since 31 August 1939, for employ-

[1] A list of States possessing compulsory pension insurance schemes is given in Appendix XI.

ment outside that country. The workers in question must have been recruited either directly by an agency of the foreign Government (a recruiting country) or by their own Government acting on behalf of the foreign Government. The employment must be for a limited period, as distinct from the unlimited period envisaged in cases of permanent migration. For that reason recruited workers who take up permanent residence in the recruiting country are excluded from the scope of Part I and are left to be dealt with under Part II. The employment for which a worker is recruited may be situated either in the territory of the recruiting country or in any territory occupied by it; it might even be situated in the country of residence in certain special circumstances—cf. Art. 6, para. 4 (*a*).

Article 2

The technique applied in Part I depends on the adoption of a series of reasonable and equitable hypotheses. Only so, it is believed, can substantial justice be secured in circumstances where insurance records are not produced. Only so, too, can claims be settled without minute investigations, which, on the whole, would not be worth the expenditure involved. Most of the recruited workers will have been employed for two or three years only, and the contribution in respect of each will be small, though the total may be very large indeed.

A recruited worker is deemed to have been at the disposal of the country of employment from the time he left his country of residence until he returned to it, unless he died meanwhile or—as follows from Article 1—decided to take up residence in the country of employment or left the latter to take up residence in a third country. In the last two eventualities, nevertheless, an appeal to Part II remains open to him.

The period during which a recruited worker is deemed to be at the disposal of the country of employment is also a period during which he is deemed to have contributed under an insurance scheme of that country.

He may have been insured, for example, as a manual worker, a salaried employee or a miner, and have been affiliated to an insurance institution catering for the corresponding social or occupational group. Each type of institution may, and generally does, have its own contribution rate. Thus, in Germany the contribution rate for a manual worker in industry is only about one third of the rate for a miner. The question of the appropriateness of the institution to which the recruited worker is deemed to have been affiliated may therefore be very important in certain countries.

Most social insurance laws specify exactly what proportion of the total joint contribution payable by employers and insured persons is to be allocated to pension insurance. In Germany, however, the situation is peculiar. The joint contribution for manual workers' pension insurance is apparently only 5.6 per cent. of the basic wage. A further 6.5 per cent., however, is payable to a non-existent scheme of unemployment insurance. This contribution is used for a variety of purposes, including the financing of unemployment assistance, but a portion of the revenue from this source equal to 18 per cent. of the contribution income of manual workers' pension insurance is paid over to the institutions which administer the latter. It follows that the real contribution of employers and insured persons for this branch of pension insurance would be 6.6 per cent. of the basic wage. The third paragraph of Article 2 takes account of such a case.

The contribution is deemed to be based on the wage that a national of the country of employment would receive for similar work. The principle of equal wages for equal work as between national and foreign workers was well established in pre-war labour treaties, and must of course be observed in the present draft Convention. For the reasons given in the explanation of Article 3, the wage taken as basis is that earned by a comparable worker of the country of employment at the date—of course since 31 August 1939—when that country first organised recruitment in the country of residence.

More detailed rules defining the identity of the insurance institution to which the recruited worker is deemed to have been affiliated, the rate of the contribution he is deemed to have paid, and the rate of the wage he is deemed to have received, are left to be laid down by the Commission established in accordance with Article 6.

Article 3

This article indicates the procedure to be followed by the insurance institution of the country of employment for the discharge of its liability to the recruited worker on his ceasing to be at the disposal of that country. The procedure is a simple one, summary and approximate in character.

The debtor institution has merely to transfer to a creditor institution, designated for the purpose by the country of residence, the total of the joint contributions deemed to have been paid in respect of the recruited worker while at the disposal of the country of employment.

The procedure is only approximate because, on the one hand, it excludes from the liability of the debtor institution any proportion of that component of the pension which is payable out of general taxation, and because, on the other hand, it includes in that liability contributions paid in respect of persons who will never qualify for a pension.

Allowance, however, is made for the cases, probably very rare, where a recruited worker has been able to complete the qualifying period under the scheme of the country of employment and has actually received instalments of a pension. These instalments or any capital sums paid in commutation of a pension are to be deducted from the liability of the debtor institution. Nevertheless, no account is to be taken, in this connection, of any component of the pension which is payable out of general taxation, whether such a component figures in a pension instalment or in a capital sum.

The question of the rate of exchange to be used at the time when the liability of the debtor institution is discharged is, of course, of critical importance, in view of the uncertain course of exchange rates in the transition period. The provisions of the Convention on this question are based on the assumption that the ratio between the purchasing powers of the two currencies ought to be constant.

In principle, the rate of exchange adopted at the time when the country of employment first organised recruitment in the territory of the country of residence is taken as the basis for the calculation of the rate to be used in the settlement of the debt—but cf. Art. 6 (7). A rate has necessarily to be fixed about the time when recruitment is begun in order to enable recruited workers to send money home to their families; it should be easy to determine, and is quite likely to be a reasonable one, as long as recruitment is voluntary in fact.

In the calculation of the rate to be used in the settlement, the basic rate is corrected in order to compensate for changes in the cost of living in the two countries concerned, so that the ratio between the purchasing powers of the two currencies is the same as it was when the basic rate was fixed.

An example will make clear the application of the proposed method:

Let a be the unit of currency of country A, the country of residence, and b that of B, the country of employment. Then $\frac{a}{b}$, which represents the value of a in terms of b, may denote the basic rate of exchange as fixed by country B.

Let the national cost of living index numbers in countries A and B at the date when the basic rate was fixed be, for example, 70 and 120, respectively; and let a suffice at that date to buy one standard basket of provisions, and b two such baskets, so that a has half the purchasing power of b. Now let the index numbers have changed to 90 and 200, respectively, at the date of settlement. Then the purchasing power of a will have become $\frac{70}{90}$ of what it was at the earlier date, and that of b $\frac{120}{200}$.

In order to restore the same relation between the purchasing powers of the two currencies as subsisted when the basic rate was fixed, we have to multiply $\frac{a}{b}$ by $\left(\frac{90}{70} \div \frac{200}{120}\right)$ or —which is the same expression more conveniently arranged for the purpose of verbal drafting—by $\left(\frac{120}{70} \div \frac{200}{90}\right)$. Thus, though neither a nor b will purchase as much as before, b will still purchase twice as much as a, and this is probably as good a guarantee as can be achieved through international regulations, the principles of which are to apply to all countries uniformly.

It is true that if, for example, in country B wages, and therefore contributions, had risen in conformity with the rise in the cost of living, the proposed method of correction of the exchange rate would inflate its contribution debt unduly. For this reason it was specified in paragraph 2 of Article 3 that the basic wage should be ascertained as of the date at which the country of employment first organised recruitment in the country of residence, that is, the same date as that of the basic wage rate.

Article 4

This article merely affirms that, with the payment of the contribution debt, the liability of the debtor institution to the recruited worker is transferred to the creditor institution.

It may be noted that, in the case where rights in course of acquisition or acquired had accrued to a worker in respect of some period of insurance in the country of employment before he was recruited, his rights fall to be maintained in conformity with Part II. It has not been thought necessary, however, to provide particularly for this rare case.

Article 5

The technique used to maintain the rights of recruited workers is a modification of that used in the agreements (as distinct from the treaties) concluded by Germany with the Governments or collaborating authorities of various countries, and France in particular.

According to the agreement with France, a recruited worker retains his membership in a French insurance institution while he is employed in Germany. When at any time he claims a pension, the claim is addressed to the competent French institution, which, when deciding upon it, takes account of the insurance period spent with, and the contributions paid to, a German institution as though the period had been spent, and the contributions had been paid, under French law; and if a pension is awarded, the German institution is to repay to the French institution a proportionate share of the instalments of the pension.

The essential difference between the technique used in the agreement with France and that used in the present article is that in the latter case the debtor institution is to discharge its liability by the payment of a capital sum at the time when the recruited worker leaves the country of employment.

Article 5 provides that every recruited worker shall, on his return, be assigned to an appropriate insurance institution of his country of residence—normally the one to which he had been affiliated before he was recruited and, in other cases, the institution competent for his district of residence or his occupation. To this institution is to be transferred by the creditor institution the sum which the latter has received on his behalf from the debtor institution. The institution to which the worker concerned has been assigned will use the sum in order to credit him with the same rights as would have been credited to him, under the law governing that institution, if he had been affiliated to it throughout the period during which he was at the disposal of the country of employment. The situation of the returned worker is thus the same as if he had been engaged in insurable employment in the country of residence instead of the country of employment.

It is worth pointing out, however, that where, under the law governing the institution of the country of residence, the basic wage of an insured person directly affects the rate of his pension, the basic wage will not be exactly the wage he is deemed to have received in the country of employment, but that wage multiplied by the ratio of the contribution rate in the country of employment to the contribution rate in the country of residence. For example, the basic wage in the country of employment is 24 units of currency and the contribution rate is 3 per cent. of that wage; in the country of residence the contribution rate is 4 per cent.; the basic wage in the country of residence is $24\times\frac{3}{4}=18$ units of currency.

If the recruited person dies before returning to the country of

residence, his dependants must be credited with the same rights as if, at the date of his death, he had become affiliated to an appropriate insurance institution of the country of residence.

It may happen that a recruited worker, on his return, will not take up insurable employment, and in that case he should be allowed to insure himself on a voluntary basis with the institution to which he has been assigned and thereby to maintain and increase the rights with which it has credited him.

Finally, it appears necessary to specify that the deduction which, under Article 3, is to be made from the debts of the debtor institution, in respect of any pension payments it has already made to a recruited worker is to be debited, not to the sum received on his account by the creditor institution, but to the general funds of the institution to which he is assigned on his return, and which should properly accept the liability as well as the assets that the worker brings with him.

Article 6

The International Commission established to assist in the application of the proposed Convention is, like that provided for in Article 20 of the Convention of 1935, composed of three members appointed by the Governing Body and one delegate from each of the ratifying countries; but in the present case the countries include non-Member States.

It may happen that several Members will ratify the Convention of 1935 only, and in that case two International Commissions differently composed would coexist, each competent to give opinions on the best means of applying the essential provisions of that Convention (cf. Art. 11). It is to be hoped, however, that the same delegates from the Governing Body would serve on both Commissions and would be able to avoid any conflict of doctrine. Such a situation, for that matter, may not last many years. It is possible that Part I of the proposed Convention, though urgently necessary for the immediate past and future, will prove to have only a limited period of usefulness, and that thereafter the provisions of the older Convention may be found adequate to secure the rights of persons migrating in normal numbers under normal conditions—cf. Art. *b* (4).

It is impossible in a Convention of the kind here proposed to do more than lay down the basic principles of its operation. The details will have to be settled when the countries concerned set about applying it, and ascertain the precise nature of the problems to be solved. It seems indispensable to endow the Commission with rather wide powers to supplement in detail the provisions of

Part I and to issue binding decisions and regulations for its application. The policy of the Commission must, however, conform consistently with the purpose and spirit of the Convention; in particular any policy which would discriminate against certain countries is to be avoided. At the same time, the Commission may find it necessary to have regard to any peculiarity of the conditions under which recruited workers are employed and insured in a given country, and, in the interest of practical and expeditious procedure, may adjust its decisions and regulations to that peculiarity.

It is felt that the Commission should not be left without a minimum of guidance as to the scope of the problems that are likely to demand its attention. An illustrative list of questions which the Commission will have to determine is therefore set forth in paragraph 3 of this Article, and a few notes on some of the items of the list are added in paragraph 4. Thus, it may be desirable to decide that any person who, under the regulations imposed by an occupying Power, is liable to forced labour, shall *ipso facto* be deemed to be affiliated to an appropriate insurance institution established by that Power, and that persons who are forcibly deported from their country of residence shall *ipso facto* be deemed to be recruited workers. Again, it may prove impracticable, in circumstances not yet foreseen, to assign each recruited worker to the insurance institution of the country of employment to which he would, if a national of that country, have been affiliated. In these circumstances it might be decided, for example, that every recruited worker shall be deemed to have been insured under the most important scheme of that country.

It will evidently be necessary to set a final date for the establishment of the claims of a creditor institution in respect of a group of recruited workers to be defined, and paragraph 5 refers to this point. In the case of workers recruited by Germany, for example, the group might include all workers recruited during the war, and the final date might be fixed so as to allow reasonable time for the workers to return to their country of residence.

The Commission would determine its procedure itself, except in one particular. It has indeed seemed necessary, in view of the considerable powers vested in the Commission, to provide specifically for a quorum of five, who might comprise the three Governing Body delegates and the delegates of two ratifying countries. It is highly desirable, however, that the proposed Convention should be ratified quickly by the countries most directly concerned, in order that the Commission should be able to establish at an early date policies which are not likely to be upset by the opposition of delegates of countries that ratify later.

The work of assisting States in the administration of Part I might involve an appreciable expenditure for the engagement of special staff to supplement the services which the International Labour Office might be expected to provide in this connection. It seems fair that any such expense should be borne by the countries for whose benefit it was undertaken.

Article 7

It has appeared necessary to make provision for the settlement of differences of opinion arising out of the application of Part I between the insurance institutions of any two parties to the proposed Convention. These differences, which may turn upon the interpretation and application either of the provisions of the Convention itself or of the regulations issued by the Commission, should naturally be referred for settlement to the Commission in the first instance in order to secure uniformity of policy.

Article 8

A country may not be satisfied with the equity or reasonableness of some decision of the Commission. It seems proper, therefore, to provide, as do many of the bilateral treaties, for the creation of an arbitration board to which any party to the Convention may appeal.

At the same time, appeals on numerous points of detail might cause excessive delays in the application of Part II. It is therefore proposed that an appeal should only be allowed with the consent of the umpire of the board. The umpire would be an impartial person appointed, preferably for a certain term, by the Governing Body of the International Labour Office. The other two members of the board would be appointed by the Commission and the appellant country, if the appeal relates to a regulation, and by the two countries concerned, if it relates to a decision given by the Commission.

The Permanent Court of International Justice may be asked for an advisory opinion on the interpretation of the Convention.

The awards of the arbitration board will be binding, and the board itself should take steps to ascertain that they are executed and should report any failure to execute them to the Governing Body for such action as it sees fit to take.

Article 9

The Commission and the umpire are each required to make an annual report to the Governing Body.

Article 10

Article 19 of the Convention of 1935 allows the provisions of the Convention to be derogated from by treaties, if the provisions of the latter afford protection of pension rights at least equivalent to that afforded by the Convention of 1935.

Article 10 of the proposed Convention secures that Part I of the same shall be recognised as fulfilling the condition laid down in Article 19 of the Convention of 1935.

This provision appears, if not indispensable, at least desirable for clarity. For, since Part II is, in effect, the Convention of 1935, which makes no distinction between recruited workers and other displaced persons, the scope of Part II might, without this provision, overlap that of Part I.

Article 10 also allows any parties to the proposed Convention to agree between themselves to replace Part I by the provisions of the Convention of 1935, that is to say, by Part II of the proposed Convention.

Part II. Other Workers

Article 11

This Part consists of only one article, the purpose of which is to render the provisions of the Convention of 1935 applicable to all displaced workers other than recruited workers, as from the date of the adoption of the proposed Convention. Accordingly, any worker who has been insured in two (or more) countries which are parties to the proposed Convention will be entitled, after that date, to have his insurance periods in both countries taken into account for the purpose of ascertaining his qualification for a pension, and to receive a share of his total pension from the insurance institutions of each country. Moreover, any person who is entitled to a pension under the laws of one such country will be able to reside in the territory of any other such country without restriction on the payment of the pension, and to have the payment of a suspended pension resumed.

While insurance periods spent before the date of the adoption of the proposed Convention may count towards the qualification for a joint pension, no arrears of pension instalments are due for any period before that date. It might be wished that more generous provision could have been proposed in the matter of the payment of arrears of pensions, but it is to be feared that such a provision would constitute an impediment to extensive ratification.

Part III. Final Provisions

The final provisions govern the entry into force of the proposed Convention and its denunciation.

The proposed Convention would become binding on Members of the Organisation, and as a rule for non-Member States, by the normal act of ratification. However, it is provided that some non-Member States, that is to say, Germany and any allies of Germany which have made use of labour recruited from countries of the United Nations, may be bound by the Convention by virtue of the terms of any armistice or peace treaty following World War II.[1]

For the first two parties to the Convention it would come into force as from the date when it was ratified by, or otherwise made binding on, the second of them. For subsequent parties, it would come into force for each as from the date when it was ratified or otherwise made binding.

Part I operates retrospectively from 1 September 1939 as regards both rights in course of acquisition and rights acquired by recruited workers. Part II, as already explained, operates retroactively from the date of adoption of the Convention as regards the payment of pensions and the resumption of suspended pensions, but insurance periods spent under the scheme of any party before that date may count towards the qualification for a pension which is claimed after that date. Different rules govern the denunciation of Parts I and II respectively.

Part I may only be denounced after the expiration of ten years from the date when the proposed Convention first came into force; denunciation does not affect liabilities incurred under Article 3, but not discharged under Article 4. The International Labour Conference may terminate the validity of Part I at any time when its provisions appear to be no longer necessary. The denunciation of Part II is governed by the relevant provisions of the Conventions of 1935.

The rules governing denunciation apply equally to all parties to the proposed Convention.

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[1] Cf. Report on Item II: *Recommendations to the United Nations for Present and Post-War Social Policy.*

PROPOSED DRAFT CONVENTION

PROPOSED DRAFT CONVENTION CONCERNING THE MAINTENANCE OF THE PENSION RIGHTS OF DISPLACED PERSONS

The General Conference of the International Labour Organisation,

Having been convened at Philadelphia by the Governing Body of the International Labour Office, and having met in its Twenty-sixth Session on 20 April 1944, and

Having decided upon the adoption of certain proposals with regard to the maintenance of rights in course of acquisition and rights acquired under compulsory pension insurance schemes by persons who have been liable to compulsory pension insurance under the laws or regulations of a country other than their country of residence, which is included in the fourth Item on the Agenda of the Session, and

Having determined that these proposals shall take the form of a draft International Convention,

adopts, this day of May of the year one thousand nine hundred and forty-four, the following Convention which may be cited as the Maintenance of Pension Rights (Displaced Persons) Convention, 1944.

PART I. RECRUITED WORKERS

Article 1

The rights in course of acquisition or rights acquired under any scheme of compulsory pension insurance by persons who, at any time since 31 August 1939, have, by reason of recruitment in their country of residence by or on behalf of an agency of another State for employment during a limited period in the territory of that State or in another territory occupied by it, been liable to compulsory pension insurance under the laws or regulations of a country other than their country of residence or would have been so liable if nationals of the recruiting country, and who have not taken up permanent residence in the territory of employment or in that of a third State, shall be maintained in accordance with the provisions of this Part of this Convention.

Article 2

1. A recruited worker shall be deemed to have been at the disposal of the recruiting country as from the date of his departure

AVANT PROJET DE CONVENTION CONCERNANT LA CONSERVATION DES DROITS A PENSION DES PERSONNES DEPLACEES DE LEURS FOYERS

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Philadelphie par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 20 avril 1944, en sa vingt-sixième session,

Après avoir décidé d'adopter diverses propositions relatives à la conservation des droits en cours d'acquisition et des droits acquis sous des régimes d'assurance-pension obligatoire par des personnes qui ont été assujetties à l'assurance-pension en vertu de la législation d'un pays autre que leur pays de résidence, question qui est comprise dans le quatrième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'un projet de convention internationale,

adopte, ce jour de mai mil neuf cent quarante-quatre, le projet de convention ci-après qui sera dénommé convention sur la conservation des droits à pension (personnes déplacées), 1944.

PARTIE I. TRAVAILLEURS RECRUTÉS

Article 1

Les droits en cours d'acquisition ou les droits acquis sous un régime d'assurance-pension obligatoire par des personnes qui, à une époque quelconque depuis le 31 août 1939, ayant été recrutées dans leur pays de résidence par un organisme d'un autre Etat ou pour le compte d'un tel organisme, pour être employées pendant une période limitée dans le territoire de cet Etat ou dans un autre territoire qu'il occupe, ont été assujetties à l'assurance-pension en vertu de la législation d'un pays autre que leur pays de résidence, ou y auraient été assujetties si elles avaient été des ressortissantes du pays recruteur, et n'ont pas établi leur résidence permanente dans le territoire où elles étaient employées, ou dans celui d'un Etat tiers, seront conservés conformément aux dispositions de la présente partie de la présente convention.

Article 2

1. Le travailleur recruté sera censé avoir été à la disposition du pays recruteur à partir de la date à laquelle il a quitté son pays

from his country of residence until the date of his return thereto or until the date of his death, whichever is the earlier.

2. Every recruited worker shall be deemed to have been affiliated to the insurance institution of the recruiting country to which, having regard to his principal occupation while at the disposal of that country, he would have been affiliated if a national thereof.

3. There shall be deemed to have been paid in respect of every recruited worker for the whole period for which he is deemed to have been at the disposal of the recruiting country the contributions which would have been payable, at the date following 31 August 1939 when the recruiting country first organised recruitment in the country of residence of the recruited worker, in respect of a national of the recruiting country who was performing similar work and was receiving the wages current for such work. Such contributions shall comprise such part of the total of the joint contribution of employed persons and employers, payable in virtue of the social insurance laws or regulations of the recruiting country, as is applied to the financing of the scheme administered by the insurance institution to which the recruited worker concerned is deemed to have been affiliated.

Article 3

1. The total of the contributions deemed to have been paid in respect of a recruited worker shall constitute a debt due by the insurance institution to which he is deemed to have been affiliated (hereinafter called the "debtor institution") to an insurance institution to be designated by the country of residence (hereinafter called the "creditor institution") and to be notified by it to the recruiting country.

2. Provided that where, at the date when this Convention comes into force as between a country of residence and a recruiting country, any instalments of a pension or any capital sum in commutation of a pension, have been paid by any debtor institution to a recruited worker, the total of such instalments or the capital sum (excluding in either case the value of any subsidy or supplement to, or fraction of, a pension which is payable out of public funds) shall be deducted from its liabilities.

3. The debt shall fall due on the date at which the recruited worker is deemed to have ceased to be at the disposal of the recruiting country or on the date of notification of the name of the creditor institution, whichever is the later; compound interest shall be payable on any portion of the debt remaining unpaid at the rate of 4 per cent. annually from the date on which the debt fell due.

4. For the purpose of converting, with a view to payment, the amount of the debt or any instalment thereof from the currency of the recruiting country into that of the country of residence, the value of the currency of the country of residence, as fixed by the recruiting country in terms of its currency at the date following 31 August 1939 when it first organised the recruitment of workers

de résidence jusqu'à la date à laquelle il y est retourné ou jusqu'à la date de son décès, suivant que l'une ou l'autre sera la première.

2. Tout travailleur recruté sera censé avoir été affilié à l'institution d'assurance du pays recruteur à laquelle, étant donné l'occupation principale qu'il a exercée pendant qu'il était à la disposition de ce pays, il aurait été affilié s'il avait été ressortissant de ce pays.

3. Il sera censé avoir été payé à l'égard de tout travailleur recruté, pour toute la période pour laquelle il est censé avoir été à la disposition du pays recruteur, les cotisations qui auraient été dues à la date, postérieure au 31 août 1939, à laquelle le pays recruteur a commencé à organiser le recrutement dans le pays de résidence du travailleur recruté, à l'égard d'un ressortissant du pays recruteur qui exécutait un travail similaire et recevait le salaire normal pour ce travail. Ces cotisations comprendront la fraction de la contribution globale des salariés et des employeurs, due en vertu de la législation d'assurance sociale du pays recruteur, qui est employée au financement du régime administré par l'institution d'assurance à laquelle le travailleur recruté est censé avoir été affilié.

Article 3

1. Le total des contributions censées avoir été payées à l'égard d'un travailleur recruté constituera une dette de l'institution d'assurance à laquelle il est censé avoir été affilié (appelée ci-après "l'institution débitrice"), envers une institution d'assurance désignée par le pays de résidence (appelée ci-après "l'institution créditrice") et indiquée par celui-ci au pays recruteur.

2. Toutefois, si, à la date à laquelle la présente convention entrera en vigueur entre le pays de résidence et le pays recruteur, il a été payé par une institution débitrice à un travailleur recruté des arrérages d'une pension ou une somme en capital en rachat d'une pension, le total de ces arrérages ou la somme en capital (à l'exclusion, dans les deux cas, de la valeur de tout subside, majoration ou fraction de pension, payable sur les fonds publics) seront déduits de ses obligations.

3. La dette viendra à échéance soit à la date à laquelle le travailleur recruté sera censé avoir cessé d'être à la disposition du pays recruteur, soit à la date à laquelle le nom de l'institution créditrice sera indiqué, selon que l'une ou l'autre sera la dernière; un intérêt composé sera dû sur toute fraction de la dette restée impayée, au taux de 4 pour cent par an à partir de la date de l'échéance.

4. Pour convertir, en vue du paiement, le montant de la dette ou d'un arrérage exprimé dans la devise du pays recruteur en un montant exprimé dans celle du pays de résidence, la valeur de la devise du pays de résidence, telle qu'elle a été fixée par le pays recruteur par rapport à sa propre devise à la date, postérieure au 31 août 1939, à laquelle il a commencé à organiser le recrutement

of the country of residence for the purpose of the conversion of any sums remitted home by such workers, shall be multiplied by a coefficient obtained by dividing the ratio of the cost-of-living index number of the recruiting country to that of the country of residence at the said date by the ratio of the cost-of-living index number of the recruiting country to that of the country of residence at the date when the payment is effected.

Article 4

On the payment of the debt all the liabilities of the debtor institution in respect of the rights in course of acquisition and rights acquired by a recruited worker while he was at the disposal of the recruiting country shall be transferred to the creditor institution.

Article 5

1. As from the date at which a recruited worker is deemed to have ceased to be at the disposal of the recruiting country, he shall be affiliated to an appropriate insurance institution of the country of residence designated by that country, and the sum received by the creditor institution from the debtor institution in respect of the recruited worker concerned shall be transferred to the appropriate institution.

2. The appropriate institution shall thereupon apply the sum so transferred to it for the purpose of crediting the recruited worker concerned with such rights, including the right to enter voluntary insurance, as would have been credited to him under the laws and regulations governing the said institution, if contributions in respect of him had been paid to it while he was at the disposal of the recruiting country.

3. Where the recruited worker ceased to be at the disposal of the recruiting country by reason of death, the foregoing paragraphs of this Article shall apply as if he were affiliated to the appropriate institution at the time of his death.

4. Any sum deducted from the liabilities of a debtor institution in accordance with the provisions of paragraph 2 of Article 3 shall not be debited to the account of the recruited worker concerned with the appropriate institution but shall be charged to its general funds.

Article 6

1. For the purpose of assisting the parties to this Convention in applying the present Part thereof, there is hereby established in connection with the International Labour Office a Commission consisting of one delegate for each State, together with three persons appointed respectively by the Government, employers' and workers' representatives upon the Governing Body of the International Labour Office.

2. The Commission may make regulations for the purpose of giving effect to the provisions of this Part of this Convention and

de travailleurs du pays de résidence, aux fins de conversion de sommes envoyées par ces travailleurs à leurs foyers, sera multipliée par un coefficient obtenu en divisant le rapport entre le nombre indice du coût de vie du pays recruteur et celui du pays de résidence à cette date par le rapport entre le nombre indice du coût de vie du pays recruteur et celui du pays de résidence à la date du paiement.

Article 4

Avec le paiement de la dette, toutes les obligations de l'institution débitrice, afférentes aux droits en cours d'acquisition et aux droits acquis par un travailleur recruté pendant qu'il était à la disposition du pays recruteur, seront transférées à l'institution créditrice.

Article 5

1. A partir de la date à laquelle il sera censé avoir cessé d'être à la disposition du pays recruteur, le travailleur recruté sera affilié à une institution d'assurance appropriée du pays de résidence, désignée par ce pays, et la somme reçue par l'institution créditrice de l'institution débitrice au titre du travailleur sera transférée à l'institution appropriée.

2. L'institution appropriée emploiera alors la somme qui lui aura été ainsi transférée à reconnaître au travailleur recruté les droits, y compris le droit d'admission à l'assurance facultative, qui lui auraient été reconnus en vertu de la législation régissant ladite institution si des cotisations avaient été payées à son égard à celle-ci pendant qu'il était à la disposition du pays recruteur.

3. Si le travailleur recruté a cessé d'être à la disposition du pays recruteur par suite de décès, les paragraphes précédents du présent article seront applicables comme si, à la date de son décès, il avait été affilié à l'institution appropriée.

4. La somme déduite éventuellement des obligations de l'institution débitrice par application du paragraphe 2 de l'article 3 ne sera pas portée au débit du compte ouvert au nom du travailleur recruté intéressé auprès de l'institution appropriée, mais sera imputée sur les fonds généraux de cette institution.

Article 6

1. Pour assister les parties à la présente convention dans l'application de la présente partie, il est créé, auprès du Bureau international du Travail, une commission composée d'un délégué pour chaque Etat, ainsi que de trois personnes désignées respectivement par les représentants au Conseil d'administration du Bureau des gouvernements, des employeurs et des travailleurs.

2. La commission pourra établir des règlements en vue de donner effet aux dispositions de la présente partie de la présente con-

resolving any difficulties which may arise in connection with the application thereof. Regulations made by the Commission shall be of general application in comparable cases and avoid differentiation between one State and another, but this requirement shall not preclude the Commission from making special regulations for cases which present distinctive features.

3. Without prejudice to the generality of the powers conferred by the preceding paragraph, the Commission shall make regulations designed to:

(*a*) resolve any doubt whether workers are to be regarded as having been recruited;

(*b*) determine the identity of the insurance institution to which a recruited worker is to be deemed to have been affiliated;

(*c*) determine the rate of the contributions to be deemed to have been paid in respect of a recruited worker;

(*d*) determine the wage on which the contribution is to be deemed to have been based;

(*e*) determine the cost-of-living index numbers of the recruiting country and the country of residence at the date of the organisation of recruitment and the date of payment.

4. In making the regulations provided for in subparagraphs (*a*), (*b*), (*c*) and (*d*) respectively of the preceding paragraph, the Commission shall have regard to:

(*a*) the propriety of classifying as recruited workers persons liable under the laws or regulations of an occupying Power to forced labour in the territories in which they reside, and certain groups of deported persons;

(*b*) circumstances in which it may not be expedient to differentiate recruited workers according to their occupation;

(*c*) any case in which the rate of contribution was changed while the recruited worker was at the disposal of the country of employment;

(*d*) typical wages of broad occupational groups, such as skilled or unskilled industrial workers, agricultural workers and miners, and the necessity of ignoring all discrimination based on race, nationality or religion.

5. The Commission shall determine the procedure to be followed by the country of residence for the establishment and presentation of claims to the recruiting country and may fix a final date for the presentation of such claims in respect of any group of recruited workers.

6. The Commission shall determine the period to be allowed to the debtor institution for the payment of its debt and the method of transfer of funds.

vention et de résoudre toute difficulté qui pourrait s'élever à l'occasion de son application. Les règlements établis par la commission seront d'application générale dans des cas comparables et devront éviter toute discrimination entre un Etat et un autre, sans cependant exclure pour la commission la possibilité d'établir des règlements spéciaux pour des cas présentant des caractères distinctifs.

3. Sans préjudice du caractère général des pouvoirs conférés par le paragraphe précédent, la commission établira des règlements en vue:

a) de permettre de déterminer, en cas de doute, si des travailleurs doivent être considérés comme ayant été recrutés;

b) de déterminer l'institution d'assurance à laquelle un travailleur recruté sera censé avoir été affilié;

c) de déterminer le taux des cotisations qui seront censées avoir été payées en faveur d'un travailleur recruté;

d) de déterminer le salaire sur lequel la cotisation sera censée avoir été calculée;

e) de déterminer quels étaient les nombres indices du coût de vie du pays recruteur et du pays de résidence à la date de l'organisation du recrutement et à la date du paiement.

4. En établissant les règlements prévus aux alinéas *a*), *b*), *c*) et *d*), respectivement, du paragraphe précédent, la commission prendra en considération:

a) l'opportunité de classer comme travailleurs recrutés les personnes assujetties au travail forcé, en vertu de la législation d'une puissance occupante, dans les territoires où elles résident et certains groupes de personnes déportées;

b) les circonstances dans lesquelles il pourrait n'être pas indiqué de faire une différenciation entre les travailleurs recrutés, d'après leur occupation;

c) tout cas dans lequel le taux de cotisation a été modifié pendant que le travailleur recruté se trouvait à la disposition du pays employeur;

d) les salaires types de groupes professionnels sommairement délimités, tels que travailleurs de l'industrie qualifiés ou non qualifiés, travailleurs agricoles et mineurs, et la nécessité d'ignorer toute discrimination fondée sur la race, la nationalité ou la religion.

5. La commission fixera la procédure que devra suivre le pays de résidence pour l'établissement des demandes et leur présentation au pays recruteur, et pourra fixer une date limite pour la présentation de ces demandes à l'égard d'un groupe quelconque de travailleurs recrutés.

6. La commission fixera le délai qui sera imparti à l'institution débitrice pour le paiement de sa dette, ainsi que les modalités de transfert des fonds.

7. If the rate of exchange fixed by the recruiting country for the purpose of the conversion of sums remitted home by the recruited workers should appear to be inequitable, the Commission may substitute another rate of exchange.

8. The Commission shall regulate its own procedure: Provided that the quorum necessary for the taking of decisions shall not be less than five, including the Chairman, who shall have a casting vote.

9. Any expenses incurred by the Commission shall be borne by the creditor institutions in such manner as may be determined by the Commission with the approval of the Governing Body of the International Labour Office.

Article 7

Any party to this Convention may refer to the Commission for decision any dispute between one of its insurance institutions and an insurance institution of another party arising out of the application of this Part of this Convention or of any regulation made by the Commission.

Article 8

1. There shall be an umpire appointed by the Governing Body of the International Labour Office to whom any party to this Convention may apply for leave to appeal against any regulation or decision made by the Commission on the ground that the Commission has exceeded its powers or has failed to take material circumstances into consideration, or on the ground that the regulation or decision is clearly inequitable to the party concerned.

2. Appeals for which the umpire grants leave shall be heard by an arbitration board consisting of the umpire and two *ad hoc* members.

3. If the appeal relates to a regulation, one of the *ad hoc* members shall be appointed by the Commission and one by the party or parties concerned.

4. If the appeal relates to a decision given by the Commission in a dispute between two or more of the parties to the Convention, one of the *ad hoc* members shall be appointed by the party or parties entering the appeal and the other by the party or parties defending the decision appealed against.

5. The procedure of the arbitration board shall be governed by rules approved by the Governing Body of the International Labour Office which shall afford an opportunity for the intervention in any case of any party to the Convention which considers that it has a legal interest involved in the case.

6. The arbitration board may confirm, amend, or revoke the regulation or decision appealed against, in which case its award shall be binding, or may refer the matter back to the Commission for further consideration.

7. Si le taux de change fixé par le pays recruteur pour la conversion des sommes envoyées par les travailleurs recrutés à leurs foyers paraît inéquitable, la commission pourra y substituer un autre taux.

8. La commission établira sa propre procédure; toutefois le quorum nécessaire pour prendre des décisions ne pourra être inférieur à cinq, y compris le président, qui aura voix prépondérante.

9. Tous frais engagés par la commission seront à la charge des institutions créditrices dans les conditions qui seront déterminées par la commission avec l'approbation du Conseil d'administration du Bureau international du Travail.

Article 7

Toute partie à la présente convention pourra soumettre à la commission pour décision tout différend qui se produira entre une de ses institutions d'assurance et une institution d'assurance d'une autre partie à l'occasion de l'application de la présente partie de la présente convention ou d'un règlement établi par la commission.

Article 8

1. Le Conseil d'administration du Bureau international du Travail désignera un surarbitre auquel toute partie à la présente convention pourra demander l'autorisation d'en appeler d'un règlement ou d'une décision de la commission, lorsqu'elle estimera soit que la commission a excédé ses pouvoirs ou négligé de prendre en considération des circonstances essentielles, soit que le règlement ou la décision est manifestement inéquitable envers la partie.

2. Les appels que le surarbitre aura autorisés seront instruits par un conseil d'arbitrage composé du surarbitre et de deux arbitres spécialement désignés pour chaque cas.

3. Si l'appel a trait à un règlement, l'un des arbitres sera désigné par la commission, et l'autre par la partie ou les parties intéressées.

4. Si l'appel a trait à une décision rendue par la commission sur un différend entre deux ou plusieurs parties à la convention, l'un des arbitres sera désigné par la partie ou les parties appelantes et l'autre par la partie ou les parties qui sont défenderesses dans l'appel.

5. La procédure du conseil d'arbitrage sera régie par des règles approuvées par le Conseil d'administration du Bureau international du Travail; ces règles devront donner à toute partie à la convention qui estime avoir un intérêt légal dans une affaire, la possibilité d'y intervenir.

6. Le conseil d'arbitrage pourra confirmer, modifier ou révoquer le règlement ou la décision dont il est appelé, auquel cas sa sentence liera les parties, ou pourra renvoyer l'affaire à la commission pour nouvel examen.

7. The arbitration board may request the Governing Body of the International Labour Office to seek an advisory opinion on any question involving the interpretation of this Convention from the Permanent Court of International Justice, or any tribunal to which the jurisdiction conferred on the Permanent Court of International Justice by the Constitution of the International Labour Organisation may hereafter be entrusted.

8. Any failure to execute an award of the arbitration board may be reported by the party in whose favour the award was made to the Governing Body of the International Labour Office, which may take such action in regard to the matter as it may consider appropriate.

Article 9

The Commission and the umpire shall each submit an annual report to the Governing Body of the International Labour Office.

Article 10

1. The parties to this Convention recognise that the provisions of this Part of this Convention fulfil in respect of persons covered thereby the conditions subject to which derogations from the provisions of the Maintenance of Migrants' Pension Rights Convention, 1935, are permitted by Article 19 thereof.

2. Any parties to this Convention may agree to substitute the provisions of the Maintenance of Migrants' Pension Rights Convention, 1935, for those of this Part of this Convention in their mutual relations.

PART II. OTHER WORKERS

Article 11

1. The maintenance of pension rights in course of acquisition or pension rights acquired by persons not covered by Part I of this Convention who have been liable to compulsory pension insurance under the laws or regulations of a country other than their country of residence shall be governed by the provisions of the Maintenance of Migrants' Pension Rights Convention, 1935, hereinafter called the principal Convention.

2. The ratification of this Convention by any Member of the International Labour Organisation which is not a party to the principal Convention shall be deemed to include the ratification by that Member of the principal Convention and to be in all respects equivalent to the ratification of the principal Convention by the Member in accordance with the terms thereof.

3. As between all of the parties to this Convention the principal Convention shall be deemed to have been in force as from the date of the adoption of this Convention.

7. Le conseil d'arbitrage pourra demander au Conseil d'administration du Bureau international du Travail de solliciter, sur toute question concernant l'interprétation de la présente convention, un avis de la Cour permanente de justice internationale ou de tout tribunal qui viendrait à être investi de la juridiction conférée à la Cour permanente de justice internationale par la Constitution de l'Organisation internationale du Travail.

8. L'inexécution d'une sentence du conseil d'arbitrage pourra être signalée par la partie en faveur de laquelle la sentence a été rendue au Conseil d'administration du Bureau international du Travail, qui pourra prendre dans l'affaire toutes mesures qu'il estimera appropriées.

Article 9

La commission et le surarbitre soumettront chacun un rapport annuel au Conseil d'administration du Bureau international du Travail.

Article 10

1. Les parties à la présente convention reconnaissent que les dispositions de la présente partie de cette convention remplissent, en ce qui concerne les personnes auxquelles elle est applicable, les conditions auxquelles l'article 19 de la convention sur la conservation des droits à pension des migrants, 1935, subordonne les dérogations aux dispositions de ladite convention.

2. Toutes parties à la présente convention pourront convenir de substituer dans leurs relations mutuelles les dispositions de la convention sur la conservation des droits à pensions des migrants, 1935, à celles de la présente partie de la présente convention.

PARTIE II. AUTRES TRAVAILLEURS

Article 11

1. La conservation des droits en cours d'acquisition ou des droits à pension acquis par des personnes auxquelles la partie I de la présente convention n'est pas applicable, et qui ont été assujetties à l'assurance-pension en vertu de la législation d'un pays autre que leur pays de résidence, sera régie par les dispositions de la convention sur la conservation des droits à pension des migrants, 1935, qui sera appelée ci-après la convention principale.

2. La ratification de la présente convention par un Membre de l'Organisation internationale du Travail qui n'est pas partie à la convention principale sera censée inclure la ratification par ce Membre de la convention principale et être à tous égards équivalente à la ratification de la convention principale par ledit Membre selon les termes de ladite convention.

3. Entre toutes les parties à la présente convention, la convention principale sera censée être entrée en vigueur à la date de l'adoption de la présente convention.

PART III. FINAL PROVISIONS

Article a

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Secretary-General.

2. This Convention may be ratified by States which are not Members of the International Labour Organisation or be made binding on such States by virtue of the terms of any armistice or peace treaty following the present war. Such States shall make annual reports on the measures which they have taken to give effect to the provisions of the Convention in the manner required of Members of the International Labour Organisation by Article 22 of the Constitution of the Organisation.

3. This Convention shall come into force on the date on which it is ratified or otherwise becomes binding in respect of two parties.

4. Thereafter, this Convention shall come into force for each party on the date on which it is ratified by that party or becomes binding upon it by some other procedure.

Article b

1. Any party to this Convention may denounce Part I thereof after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Any party to this Convention which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for therein, will be bound by the provisions of Part I of this Convention for another period of ten years and, thereafter, may denounce Part I at the expiration of each period of ten years under the terms provided for in this Article.

3. The denunciation of Part I of this Convention by a recruiting country shall not affect liabilities incurred by that country before the denunciation takes effect.

4. The International Labour Conference may, by a decision taken by a two-thirds majority at a session at which the matter is included in its agenda, terminate the application of the provisions of Part I of this Convention if it is satisfied that the continued application of the said provisions has ceased to be necessary and that equitable arrangements have been made for the discharge of any obligations resulting from the said provisions which are still outstanding.

5. The denunciation of the obligations resulting from Part II of this Convention by any party shall be governed by the provisions of Articles 22 and 25 of the Maintenance of Migrants' Pension Rights Convention, 1935.

PARTIE III. DISPOSITIONS FINALES

Article a

1. La présente convention ne liera que ceux des Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Secrétaire général.

2. La présente convention pourra être ratifiée par des Etats qui ne sont pas Membres de l'Organisation internationale du Travail ou rendue obligatoire pour de tels Etats par les termes d'un armistice ou traité de paix suivant la présente guerre. Lesdits Etats présenteront des rapports annuels sur les mesures prises par eux pour donner effet aux dispositions de la convention, dans les conditions requises des Membres de l'Organisation internationale du Travail par l'article 22 de la Constitution de l'Organisation.

3. La présente convention entrera en vigueur à la date à laquelle elle commencera à lier deux parties du fait qu'elle a été soit ratifiée, soit rendue obligatoire.

4. Par la suite, la présente convention entrera en vigueur pour chaque partie à la date à laquelle elle sera ratifiée par cette partie ou, par quelque autre procédure, sera rendue obligatoire à son égard.

Article b

1. Toute partie à la présente convention peut en dénoncer la partie I à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Secrétaire général et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Toute partie à la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe précédent, ne fera pas usage de la faculté de dénonciation prévue audit paragraphe, sera liée par les dispositions de la partie I de la présente convention pour une nouvelle période de dix années et, par la suite, pourra dénoncer la partie I à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

3. La dénonciation de la partie I de la présente convention par un pays recruteur n'affectera pas les obligations incombant à ce pays avant que la dénonciation prenne effet.

4. La Conférence internationale du Travail pourra, par une décision adoptée à la majorité des deux tiers à une session à l'ordre du jour de laquelle figurera cette question, mettre fin à l'application des dispositions de la partie I de la présente convention, si elle estime que l'application desdites dispositions a cessé d'être nécessaire et que des arrangements équitables ont été pris pour l'exécution des obligations, résultant desdites dispositions, qui restent à exécuter.

5. La dénonciation des obligations résultant pour une partie de la partie II de la présente convention sera régie par les dispositions des articles 22 et 25 de la convention sur la conservation des droits à pension des migrants, 1935.

APPENDICES

APPENDIX I

Convention [No. 48] concerning the establishment of an international scheme for the maintenance of rights under invalidity, old-age and widows' and orphans' insurance[1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Nineteenth Session on 4 June 1935, and

Having decided upon the adoption of certain proposals with regard to the maintenance of rights in course of acquisition and acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another, which is the first item on the Agenda of the Session, and

Having determined that these proposals shall take the form of a Draft International Convention,

adopts, this twenty-second day of June of the year one thousand nine hundred and thirty-five, the following draft Convention which may be cited as the Maintenance of Migrants' Pension Rights Convention, 1935:

Part I. Establishment of International Scheme

Article 1

1. There is hereby established between Members of the International Labour Organisation a scheme for the maintenance of rights in course of acquisition with and of rights acquired with compulsory invalidity, old-age and widows' and orphans' insurance institutions (hereinafter called insurance institutions).

2. References to Members in Parts II, III, IV and V of this Convention shall be construed as including only Members of the International Labour Organisation bound by this Convention.

Part II. Maintenance of Rights in Course of Acquisition

Article 2

1. The insurance periods spent by persons who have been affiliated to insurance institutions of two or more Members shall,

[1] Date of coming into force: 10 Aug. 1938.

irrespective of the nationality of such persons, be totalised by each such institution in accordance with the following rules.

2. For the maintenance of rights in course of acquisition the periods to be totalised shall be:

(*a*) contribution periods;

(*b*) periods in respect of which contributions were not payable but during which rights are maintained under the laws or regulations under which they were spent;

(*c*) periods during which a cash benefit has been paid under an invalidity or old-age insurance scheme of another Member; and

(*d*) periods during which a cash benefit has been paid under some other social insurance scheme of another Member, in so far as a corresponding benefit would, under the laws or regulations governing the institution which is totalising, maintain rights in course of acquisition.

3. For the purposes of:

(i) determining whether any conditions as to the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special advantages (guaranteed minima) have been fulfilled;

(ii) the recovery of rights;

(iii) the right to enter voluntary insurance; and

(iv) the right to medical treatment and attendance;

the periods to be totalised shall be:

(*a*) contribution periods; and

(*b*) periods in respect of which contributions were not payable but which are counted for the purpose of the qualifying period both under the laws or regulations under which they were spent and under the laws or regulations governing the institution which is totalising.

4. Provided that, where under the laws or regulations of a Member periods spent in an occupation covered by a special scheme are alone to be taken into account for the purpose of determining whether a claimant is entitled to certain advantages, the periods to be totalised for the purpose set forth in paragraphs 2 and 3 shall be restricted to periods spent under the corresponding special insurance schemes of other Members or, in respect of a Member with no special insurance scheme for the occupation concerned, to periods spent in that occupation under the insurance scheme applicable thereto.

5. Contribution periods and assimilated periods spent simultaneously with institutions of two or more Members shall be reckoned once for the purpose of totalisation.

Article 3

1. Each insurance institution from which on the basis of the totalised insurance periods the claimant is entitled to benefit shall calculate the amount of such benefit according to the laws and regulations governing the said institution.

2. Benefits or benefit components which vary with the time spent in insurance and are determined with sole regard to the periods spent under the laws and regulations governing the institution liable shall be payable without reduction.

3. Benefits or benefit components which are determined independently of the time spent in insurance and consist of a fixed sum, a percentage of the remuneration taken into account for insurance purpose, or a multiple of the average contribution, may be reduced in the ratio of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing the institution liable to the total of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing all the institutions concerned.

4. The provisions of paragraphs 2 and 3 shall apply to any subsidy or supplement to or fraction of a pension which is payable out of public funds.

5. The apportionment of the cost of medical treatment and attendance is not regulated by this Convention.

Article 4

In cases in which the total of the insurance periods spent with the insurance institutions of a Member does not amount to twenty-six contribution weeks, the institution or institutions with which they were spent may decline to recognise any liability for benefit. Periods in respect of which liability for benefit has been so declined shall not be taken into account by any of the other institutions concerned when making the reduction permitted by Article 3, paragraph 3.

Article 5

1. If a person who is entitled to benefit from the insurance institutions of at least two Members would but for this Convention be entitled to receive from any such institution in respect of periods spent with it a benefit greater than the total of the benefits to which he is entitled under Article 3, he shall be entitled to receive from that institution a complementary benefit equal to the difference.

2. Where such complementary benefits are due from more than one institution, the total amount due to the beneficiary shall be the highest such benefit due from any one of them and the liability for this amount shall be apportioned among them in proportion to the complementary benefit which would have been due from each individually.

Article 6

Provision may be made by agreement between the Members concerned for:

(*a*) the reckoning of benefits by a method which differs from that prescribed in Article 3 but gives a result which is at least equivalent on the whole to that given by applying the said Article, subject to the total of the benefits payable never being less than the highest benefit payable by any one insurance institution in respect of periods spent with it;

(*b*) enabling an insurance institution of one Member to discharge its liability to the insured person and his dependants by paying to the insurance institution of another Member to which he has become affiliated the capital representing the rights in course of acquisition by him at the date at which he ceased to be affiliated to the institution, subject to the latter institution consenting thereto and undertaking to apply the capital for the purpose of crediting rights;

(*c*) limiting the total of the benefits granted by the insurance institutions of the Members to the amount due on the basis of the totalised insurance periods from the institution governed by the most favourable laws and regulations.

Article 7

A claimant shall not be required to submit his claim for benefit to more than one of the insurance institutions to which he has been affiliated. This institution shall then inform the other institutions mentioned in the claim.

Article 8

For the purpose of converting sums expressed in the currency of another Member, insurance institutions shall, when dealing with claims for benefit, adopt the relation between the two currencies which, on the first day of the quarter during which the claim was submitted, obtained on the principal foreign exchange market of the Member in the currency of which the sum is expressed: Provided that provision may be made for another method of conversion by agreement between the Members concerned.

Article 9

Any Member may decline to apply the provisions of this Part of this Convention in its relations with a Member the laws and regulations of which do not cover the risk in respect of which a benefit is claimed.

PART III. MAINTENANCE OF ACQUIRED RIGHTS

Article 10

1. Persons who have been affiliated to an insurance institution of a Member and their dependants shall be entitled to the entirety

of the benefits the right to which has been acquired in virtue of their insurance:

(*a*) if they are resident in the territory of a Member, irrespective of their nationality;

(*b*) if they are nationals of a Member, irrespective of their place of residence.

2. Provided that any subsidy or supplement to or fraction of a pension which is payable out of public funds may be withheld from persons who are not nationals of a Member.

3. Provided also that, for a period of five years from the first coming into force of this Convention, a Member may reserve the payment of any subsidy or supplement to or fraction of a pension which is payable out of public funds to the nationals of Members with which it has concluded supplementary agreements to that effect.

Article 11

1. Pensions the right to which is maintained under Article 10 shall not be commuted for lump sums smaller than their capital value.

2. Provided that the insurance institution liable for benefit may commute pensions the monthly value of which is inconsiderable for lump sums calculated according to the laws and regulations governing the said institution, subject to the said sums not being reduced on the ground of residence abroad.

Article 12

1. The provisions of the laws or regulations of a Member permitting the reduction or suspension of benefit if the person concerned has concurrent rights to other social insurance benefits or is in employment involving compulsory insurance may be applied to beneficiaries under this Convention in respect of benefits payable under an insurance scheme of another Member or in respect of employment in the territory of another Member.

2. Provided that provisions permitting reduction or suspension in the case of concurrent benefits in respect of the same risk shall not apply to benefits the right to which is acquired under Part II of this Convention.

Article 13

An insurance institution liable for benefit in virtue of this Convention may discharge in the currency of its own country its liability to all persons entitled to such benefit.

PART IV. MUTUAL ASSISTANCE IN ADMINISTRATION

Article 14

1. The authorities and insurance institutions of each Member shall afford assistance to those of other Members to the same

extent as if they were applying their own laws and regulations relating to social insurance, and more particularly shall, at the request of an institution of any Member, carry out the investigations and medical examinations necessary to determine whether the persons in receipt of benefits for which the latter institution is liable satisfy the conditions for entitlement to such benefits.

2. In so far as the Members concerned do not otherwise agree, the expenses to be repaid for assistance so afforded shall be an amount determined according to the scale of charges of the institution or authority which has afforded assistance or, in the absence of such a scale, the expenditure incurred.

Article 15

Any exception from fees granted by the laws or regulations of a Member in respect of documents furnished to its authorities or insurance institutions shall be extended to the corresponding documents furnished in connection with the application of this Convention to the authorities and insurance institutions of any other Member.

Article 16

With the consent of the competent central authorities of the Members concerned, an insurance institution liable for benefit to a beneficiary resident in the territory of another Member may, on terms agreed between the two institutions, entrust the insurance institution of the place of residence of the beneficiary with the payment of such benefit on its behalf.

Part V. Operation of International Scheme

Article 17

Every Member which at the date of its ratification of this Convention has not established such a scheme undertakes to establish within twelve months from that date either:

(*a*) a compulsory insurance scheme under which pensions are payable at an age not later than sixty-five to the majority of persons employed in industrial and commercial undertakings; or

(*b*) a compulsory invalidity, old-age and widows' and orphans' insurance scheme covering a substantial proportion of the persons employed in industrial and commercial undertakings.

Article 18

1. Each Member shall treat the nationals of other Members on the same footing as its own nationals for the purpose of liability to compulsory insurance and for the purpose of insurance benefits, including any subsidy or supplement to or fraction of a pension which is payable out of public funds.

2. Provided that any Member may restrict to its own nationals the right to any subsidy or supplement to or fraction of a pension which is payable out of public funds and granted solely to insured persons who have exceeded a prescribed age at the date when the laws or regulations providing for compulsory insurance come into force.

Article 19

The provisions of this Convention may be derogated from by treaties between Members which do not affect the rights and duties of Members not parties to the treaty and which make definite provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention.

Article 20

1. For the purpose of assisting Members in applying this Convention there is hereby established in connection with the International Labour Office a Commission consisting of one delegate for each Member together with three persons appointed respectively by the Government, employers' and workers' representatives upon the Governing Body of the Office. The Commission shall regulate its own procedure.

2. At the request of one or more Members concerned, the Commission, which shall be guided by the principles and purposes of this Convention, shall make recommendations as to the manner in which it shall be applied.

Article 21

1. Where, prior to the coming into force of this Convention, a pension has not been awarded or the payment of a pension has been suspended on account of the residence abroad of the person concerned, the pension shall be awarded or the payment of the pension resumed in pursuance of the Convention as from the date of the coming into force thereof for the Member concerned.

2. In applying this Convention account shall be taken of insurance periods prior to its coming into force if account would have been taken of such periods if this Convention had been in force during these periods.

3. At the request of the person concerned claims settled before the coming into force of this Convention shall, unless they have been settled by the payment of a lump sum, be reviewed. Review shall not involve the payment of arrears of, or the refund of, benefits for the period prior to the coming into force of the Convention for the Member concerned.

Article 22

1. The denunciation of this Convention by a Member shall not affect the liabilities of its insurance institutions in respect of claims which matured before the denunciation took effect.

2. Rights in course of acquisition which are maintained in pursuance of this Convention shall not lapse by reason of the denunciation thereof: their further maintenance during the period subsequent to the date on which the Convention ceases to be in force shall be regulated by the laws and regulations governing the institution concerned.

Part VI. Final Provisions

Article 23

The formal ratification of this Convention shall be communicated to the Secretary-General of the League of Nations for registration.

Article 24

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Secretary-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Secretary-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 25

As soon as the ratifications of two Members of the International Labour Organisation have been registered, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 26

1. A Member which has ratified this Convention may denounce it after the expiration of five years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of five years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

Article 27

At the expiration of each period of five years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the Agenda of the Conference the question of its revision in whole or in part.

Article 28

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

(*a*) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 26 above, if and when the new revising Convention shall have come into force;

(*b*) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 29

The French and English texts of this Convention shall both be authentic.

APPENDIX II

German-Italian Treaty concerning Social Insurance

Notification of 31 August 1940 (RGBl, *1940, II, p. 208*)

The Treaty came into force on 1 September 1940. It replaces the Treaty of 31 July 1912.

German and Italian nationals and their dependants are placed on the same footing with respect to rights and duties under the social insurance schemes of both States.

The Treaty, in so far as it concerns pension insurance, relates in Germany to the general scheme, the salaried employees' scheme and the miners' scheme; and in Italy to the general scheme, the seamen's scheme and some special schemes of less importance.

In principle the Treaty is applied according to the law of the country in which the person is insurably employed. Exceptions are made as regards persons employed abroad for less than six months, railwaymen, postmen, etc.

Nationals of each State and their dependants residing in either State are entitled without any restriction to social insurance benefits the right to which has been acquired in each State, including supplements payable out of public funds.

Nationals of one or other State and their dependants are, while residing in a third State, entitled to the social insurance benefits of the other State, including supplements payable out of public funds, under the same conditions as those under which the nationals of the latter State are entitled to such benefits while residing in the third State.

For persons who were insured against invalidity, old age and death in both States, contribution periods are totalised for the purpose of applying the legal provisions of each State concerning the qualifying period, maintenance of rights and the right to enter voluntary insurance. The same rule applies to periods which, according to the laws of both States, are assimilated to contribution periods. Periods so assimilated according to the law of the one State only are to be taken into account by that State only.

Each insurance institution decides according to its law and the Treaty whether the claimant is entitled to benefit.

The German insurance institution grants such a proportion of (*a*) the basic sum, (*b*) the children's supplements, and (*c*) increments up to a total of 120 R M a year, as corresponds to the ratio of the insurance period spent in Germany to the total of the insurance periods spent in both States. In addition, it grants in full any excess of the increments over a total of 120 R M a year.

The Italian insurance institution grants a similar proportion of (*a*) the State supplement, and (*b*) that part of the remainder of the pension which exceeds the product of the total of the Italian contributions multiplied by the lowest coefficient applied in the calculation of pensions. In addition, it grants in full such part of its pension as corresponds to the product of the total Italian contributions multiplied by the lowest coefficient applied in the calculation of pensions.

It should be explained that under Italian legislation in force in 1943 the lowest coefficient is 24 per cent.

These general rules are modified in the case of persons who were insured under the German miners' scheme or under the Italian seamen's scheme.

No claim lies against the insurance institution of the one State if less than thirteen contribution weeks have been spent in that State, but in this case there is no corresponding reduction of the liability of the other State.

If the total of the benefits as reckoned under the Treaty is lower than the benefit to which the claimant would have been entitled in respect only of insurance periods spent in one of the two States, it is the latter benefit which is payable, and the insurance institution in that State must pay the excess.

For the purpose of ascertaining the amount of the excess, regard is to be had to the relation between the currencies of the two States on the foreign exchange market of the capital of the State to which the insurance institution liable for the excess belongs. The rate in question is that current at the date at which the increase of the pension is calculated. A fresh calculation is not in order unless the rate varies more than 5 per cent.

For the purpose of applying the legal provisions of the one State or both States concerning the suspension or reduction of social insurance benefits, the other benefits or payments arising in the one State which result in such suspension or reduction are deemed to be equivalent to the corresponding other benefits or payments arising in the other State. Where the other benefits or payments arising in the one State result in the suspension or reduction of social insurance benefits under the laws of both States, such other benefits or payments are to be taken into account by each State for the purpose of suspension or reduction only in such proportion as corresponds to the ratio of the insurance periods spent in the two States, respectively.

Cash benefits to insured persons and their dependants are payable without restriction by the insurance institution liable under the Treaty in its own currency.

The insurance institutions of both States may agree on the manner in which they will settle their accounts, subject to the approval of the highest administrative authorities of both States, namely, the Minister of Labour in Germany and the Minister of Corporations in Italy.

For the purpose of converting into the currency of the one State a sum expressed in the currency of the other, the exchange rate to be used is that which obtains on the foreign exchange market of the capital of the State in whose currency the sum is expressed.

The institutions, authorities and courts of the social insurance systems of the two countries lend each other mutual assistance in applying the Treaty. Consular and diplomatic representatives may act on behalf of them. They may deal directly with one another and with insured persons. Claims for benefit addressed to the insurance institution of one State are to be deemed to have been addressed to those of the other State also.

The Treaty applies in respect of claims arising, and insurance periods spent, before the Treaty came into force.

Benefits which were suspended are to be resumed as from the date when the Treaty came into force.

The highest administrative authorities of both States are empowered to supplement and amend the Treaty by agreement. Agreement is required in particular where the one State concludes a Treaty with a third State which provides for taking into account contribution periods in the third State for the purpose of reckoning the qualifying period, maintaining rights and calculating benefits.

The highest administrative authorities are to settle all difficulties arising out of the application of the Treaty. If they are unable to settle the difficulty, the dispute is to be decided by arbitration. The arbitration court consists of one national from each State and one national from a third State, who is to be chosen by the Governments of both States together.

APPENDIX III

Social Insurance in Bohemia-Moravia

The Czechoslovak social insurance system continues to operate under German supervision in Bohemia-Moravia. In the parts of Czechoslovakia which have been incorporated into Germany, Hungary and Slovakia, the systems of these countries have been substituted for the Czechoslovak system and agreements have been entered into for the purpose of transferring Czechoslovak social insurance property and reserves to each of these countries on behalf of persons formerly insured under the Czechoslovak system.

The provisions of the Treaty on social insurance between Czechoslovakia and Germany of 21 March 1931 are applied as far as the changed circumstances allow in the relations between Bohemia-Moravia and Germany.

The Treaty provides for taking account of insurance periods spent in either country for the purpose of reckoning the qualifying period, maintaining rights and calculating benefits. Pensions awarded in one country are payable to pensioners residing in the other, without restriction.

Agreement between Germany and the Government of the Protectorate of Bohemia-Moravia concerning Social Insurance
(Order of 25 April 1940, RGBl, *1940, II, p. 117)*

In so far as it relates to pension insurance, the agreement provides for the sharing of benefit liabilities and insurance monies and property between German and Czechoslovak insurance institutions, in respect of persons insured under the Czechoslovak system who find themselves residing in the part of Czechoslovakia incorporated in Germany, on the one hand, and the part which is called Bohemia-Moravia, on the other.

German insurance institutions are responsible for pensions granted in respect of claims arising before 1 October 1938 on the part of persons who were insured under the Czechoslovak system, and who were living in the incorporated area on 1 January 1940, or having lived there after 1 October 1938, have removed to another part of Germany before 1 January 1940.

The insurance institutions of Bohemia-Moravia are responsible for pensions granted by German insurance institutions in respect of claims arising before 1 October 1938 on the part of persons who were living in the incorporated area and who before 1 January 1940 removed to Bohemia-Moravia.

Liability for a pension begins at the date when it is granted, but not earlier than 1 October 1938.

The German insurance institution is required, when settling claims arising after 30 September 1938, to take account of insurance periods spent with the Czechoslovak insurance institution, if the insured person was employed on 1 January 1940 in the incorporated area or was employed on 1 October 1938 in that area, but removed to another part of Germany before 1 January 1940.

The insurance institution of Bohemia-Moravia is required when settling claims arising after 30 September 1938, to take account of insurance periods spent with the German insurance institutions in any part of Germany, if the insured person was employed on 1 October 1938 in the incorporated area and removed to Bohemia-Moravia before 1 January 1940.

In the settlement of accounts between the insurance institutions of Germany and Bohemia-Moravia, the latter were required to transfer to the former, in respect of new liabilities assumed, pension insurance reserves amounting to about 4 billion Czech crowns; the transfer operation was due to have been completed by the end of 1940.

APPENDIX IV

Introduction of German Insurance System in Alsace-Lorraine

Alsace: Order of 28 Dec. 1940 (RABl, *1941, II, p. 59)*
Lorraine: Order of 23 Dec. 1940 (RABl, *1941, II, p. 58)*

By these Orders provision was made for the substitution of the German pension insurance system (general scheme, salaried employees' scheme and miners' scheme) for the French local insurance system, which was in force in the Departments of the Haut-Rhin, Bas-Rhin and Moselle. This system was derived from the German system, as it had operated up to 1918.

The Orders recognise insurance periods spent under the French local system and the French general system for the purpose of reckoning the qualifying period maintaining rights and—under conditions yet to be determined—calculating benefits, under German law.

APPENDIX V

Introduction of German Insurance System in Luxemburg

Order of 30 September 1941 (RABl, *1941, II, p. 54)*

The German pension insurance system was introduced in Luxemburg on 1 October 1940. The German system replaced the Luxemburg system, which was similar to the former in its structure.

Insurance periods spent under the Luxemburg system were treated as periods spent under the German system for the purpose of reckoning the qualifying period, maintaining rights, and—with some adaptations—calculating benefits under the German system.

APPENDIX VI

Introduction of German Insurance System in the Incorporated Eastern Areas

Order of 22 December 1941 (RABl, *1942, II, p. 2*)

The Order came into force on 1 January 1942, except in Upper Silesia, where it was enforced as from a date two years earlier.

The German pension insurance system (general scheme, salaried employees' scheme and miners' scheme) is established in the Incorporated Eastern Areas. It applies to employed persons, irrespective of nationality, except protected and stateless persons of Polish race and Jews.

The excepted groups pay the normal contributions, but are not entitled to benefits. Protected and stateless persons of Polish race, however, may receive restricted benefits in the form of relief to which there is no legal right; Jews may not even receive relief.

The German system replaces the Polish system as from the date of the enforcement of the Order.

Provision is made for continuing pensions already granted under the Polish system, their amounts being converted at the rate of 1 zloty = 0.50 RM; to the pensions so converted are added the basic sum and the children's supplements payable out of Reich funds.

Persons claiming pensions in respect of insurance periods spent under the Polish system only, but whose claims were not yet settled at the date of the enforcement of the Order, receive a pension composed of a basic sum and children's supplements payable out of Reich funds, and increments in respect of contributions paid under the Polish system at the fixed annual rate of 20 per cent. of the total of the contribution payments; where this total cannot be ascertained, the fixed annual rate is 0.32 RM for each weekly contribution—a rate which corresponds to contributions under the German system based on a wage of 24-30 RM weekly.

With respect to pensions claimed after the date of its enforcement, the Order provides for taking account both of Polish and of German insurance periods for the purposes of reckoning the qualifying period, maintaining rights and calculating benefits.

According to instructions of the German Minister of Labour dated 26 August 1942, the relief which may be granted to protected persons and stateless persons of Polish race is confined to cases of invalidity, and a widow may receive relief in respect of her husband's insurance only if she is an invalid. Relief for an invalid consists of a basic sum of 72 RM a year, together with increments at the rate of 60 RM for each year of insurance completed before 1 October 1942, and the normal increments allowed by the German system in respect of insurance periods after that date.

APPENDIX VII

Introduction of German Insurance System in Northern France and Belgium

France: Notification of 1 July 1943 (RABl, *1943, II, p. 466*)

German nationals employed in French undertakings are insured under the French social insurance law. This rule applies also to persons of German race from Alsace-Lorraine, Luxemburg, the Incorporated Eastern Areas, the Bialystok district and the General Government, nationals of Bohemia-Moravia and, if employed at the instance of German agencies, protected persons of non-Polish race.

German nationals who resided in France before 1 September 1939 are insured under the French system, even if they are employed by a German undertaking or agency.

Residents of the area, irrespective of nationality, are insured under the French system.

Foreign workers who are not settled in France and are employed by German undertakings, are insured under the German system if they are employed at the instance of German agencies situated outside of France. This rule does not apply to Polish workers from the Incorporated Eastern Areas, the Bialystok district, the General Government and the Baltic countries, or to Eastern workers, Jews and gypsies.

(*Belgium: Notification of 30 June 1943* (RABl, *1943, II, p. 466*)

The provisions of this Order are the same *mutatis mutandis* as the preceding one applicable to Northern France.

APPENDIX VIII

Social Insurance of Germans in General Government

Order of 17 June 1940 (RGBl, *1940, I, p. 908*)

The German pension insurance system (its general scheme, salaried employees' scheme and miners' scheme) is deemed to have come into force on 1 October 1939.

The system applies to all German nationals (in virtue of instructions issued by the German Minister of Labour on 20 August 1941 and 24 February 1942), to nationals of Bohemia-Moravia and other foreign labour, such as Italians, Slovaks, Dutchmen, Belgians, Frenchmen, etc., who are employed in the General Government at the instance of German agencies.

For German nationals insurance periods spent under a Polish scheme are taken into account under the corresponding German scheme in the same way as if the German-Polish Treaty of 11 June 1931 were in force.

APPENDIX IX

Social Insurance of Poles in General Government

Order of 7 March 1940 (RABl, *1940, II, p. 124*)

The Polish social insurance system continues to operate, though under German management and in a mutilated form in the General Government, where it applies to Poles and Jews only.

While contributions are still collected, all legal claim to benefits was abolished in March 1940.

In place of benefits, insured persons may receive relief. Rules for fixing the rate of the relief payments were laid down in the above-mentioned Order. For example, former pensions up to 30 zloty a month are payable in full and one half the excess of the pension over 30 zloty is also payable, provided that the total pension does not exceed 60 zloty. In November 1941 all pensions were increased by a cost of living supplement of 30 zloty a month.

Jews pay the regular contributions, but do not receive any cash benefit.

APPENDIX X

French-German Agreement

Notification of 6 March 1942 (RABl, *1942, II, p. 184*)

The Agreement came into force as from 1 November 1941.

During their employment in Germany, workers from France are subject to the German social insurance system in the same way as German nationals.

Insurance periods spent by workers from France under the German general scheme, the salaried employees' scheme and the miners' scheme are taken into account by the French insurance institution for the purpose of ascertaining whether benefit is payable and at what rate in case of invalidity, old age or death.

Workers from France who have been employed in Germany and have belonged to the German general or salaried employees' scheme, claim benefit when an event insured against occurs from the competent French insurance institution, according to French law. A supplementary agreement may be concluded later concerning cases where overlapping occurs between German and French insurance periods.

For the purpose of deciding whether benefit is payable and in some cases determining its rate, the French insurance institution takes account of insurance periods spent in Germany as though they had been spent during affiliation with it.

For the purpose of determining the rate of any benefit which varies with wages, the French insurance institution takes account of the "comparable wage" received by a German worker. The "comparable wage" is the German wage reduced by one sixth. The reason given for the reduction is that the purchasing power of the mark is higher than that of the equivalent number of francs according to the rate of exchange.

The contribution to the German general scheme is 5.6 per cent. of wages, and accordingly the actual German wage is eighteen times the contribution, and the "comparable wage" is fifteen times, respectively.

The German insurance institution refunds to the French insurance institution the excess benefit resulting from taking German insurance periods into account. The excess is equal to the difference between the benefit based on French and German insurance periods and wages received in France, on the one hand, and the benefit based on French and German insurance periods and French and German wages, on the other.

For example, a person claiming an invalidity pension under the French general scheme might have had eighteen years of insurance in France and earned 180,000 francs, and a further two years' insurance in Germany; his average basic wage, disregarding wages earned in Germany, would thus be 9,000 francs and his pension would be 40 per cent. of that wage, that is, 3,600 francs. If now account is taken of the "comparable wage" of 13,000 francs a year earned in Germany, the basic wage becomes 206,000 francs divided by 20, that is, 10,300 francs. The pension, being 40 per cent. of this wage, is 4,120 francs. The sum owed by the German to the French insurance institution is the difference between 3,600 and 4,120 francs, that is, 520 francs a year.[1]

As regards workers from France insured under the German miners' scheme, it is provided that they should receive their benefit from the French miners' scheme, which calculates it according to French law, but takes account of German insurance period. The German insurance institution refunds to the French insurance institution such proportion of the benefit as corresponds to the ratio between the German insurance period and the total of the French and German periods.

Workers from France are defined as manual workers and salaried employees who, after 1 July 1940, have been supplied by the competent German agencies for work in Germany; special rules may be applied to such workers if they are not of French nationality.

[1] *Reichsarbeitsblatt*, 1942, Part II, p. 220.

APPENDIX XI

List of Countries Possessing Schemes of Compulsory Pension Insurance Applying to Industrial and Commercial Undertakings, 1 January 1944

I = invalidity pensions
O = old-age pensions
S = survivors', i.e., widows' and orphans' pensions

Belgium	O, S	Ireland	I, S
Brazil	I, O, S	Italy	I, O
Bulgaria	I, O, S	Luxemburg[3]	I, O, S
Chile	I, O	Mexico[1]	I, O, S
Costa Rica[1]	I, O, S	Netherlands	I, O, S
Cuba	I, O, S	New Zealand	I, O, S
Denmark[2]	I, O	Panama[1]	I, O, S
Ecuador[1]	I, O, S	Paraguay	I, O, S
Finland	I, O	Peru	I, O
France	I, O	Poland[3]	I, O, S
Germany	I, O, S	Rumania	I, O, S
Great Britain	I, O, S	Sweden	I, O
Greece	I, O, S	U. S. S. R.	I, O, S
Hungary	I, O, S	United States	O, S
		Uruguay	I, O, S

[1] In process of enforcement.
[2] No contribution is paid for old-age pension, but pension is only awarded to persons who have contributed for invalidity pensions.
[3] Suspended during occupation by Germany.