

The International Labour Organisation and social security: towards universal social protection?

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1 The period preceding the establishment of the International Labour Organisation

1.1 Evolution of a social security concept: from a political idea to the creation of systems

1. Montesquieu, in his famous work *L'esprit des lois*, considered that the State is invested with powers with regard to its citizens, and in particular that of ensuring each citizen a subsistence, food, clothing and a way of life that is not contrary to health¹. However, with regard to social security, the thinker most often referred to is L. Bourgeois, who implements solidarism, a doctrine whose foundations he outlines in an article in the new review *La Solidarité*, showing the debt owed by the privileged to the disadvantaged and making solidarity the basis of society². According to the latter author, as "man is born a debtor of human association", he is obliged to his contemporaries but also to his elders and descendants. Solidarism is born of the idea of a 'social debt' which implies for all individuals the right to an education, a base of basic goods to exist and insurance against the main risks of life. Alongside these rights, a "social duty" is assigned to each person³.
2. However, as early as the 16th century^e, the idea of social security was already germinating in Europe, but in an insurance-based form⁴. Thus, a set of laws called "*poor law*" aimed at relieving the poor developed in England in the 16th century^e and was maintained, with various modifications, until after the Second World War. The Elizabethan Poor Laws, as codified in 1597-1598, were administered by parish overseers, who provided assistance to the elderly, the sick and poor children, as well as work for able-bodied people in workhouses⁵.

¹ Montesquieu, *L'esprit des lois*, book XXIII, 1748 quoted in I. DAUGAREILH and M. BADEL (eds.), *La sécurité sociale : universalité et modernité, approche de droit comparé*, Pedone, 2019, p. 9.

² L. BOURGEOIS, *Solidarité*, 3^e ed., Paris, Librairie A. Colin, 1902.

³ J. DAMON, "La pensée de Léon Bourgeois (1851-1925)", *Informations sociales*, 2007/2 (n° 138), p. 45.

⁴ I. DAUGAREILH and M. BADEL (eds.), *La sécurité sociale: universalité et modernité, approche de droit comparé*, Pedone, 2019, p. 10.

⁵ ^eAt the end of the 18th century, this system was supplemented by the so-called Speenhamland system, which provided allowances for workers whose wages fell below what was considered a subsistence level. The resulting increase in public assistance expenditure was so great that a new Poor Law was enacted in 1834, based on a harsher philosophy that regarded the pauperism of able-bodied workers as a moral failure. The new law provided no relief for the able-bodied poor, except for employment in a workhouse, with the aim of encouraging workers to seek regular employment rather than charity. ^{ee}The development of humanitarian sentiment in the 19th century helped to soften the harshness of the law in practice, and the phenomenon of industrial

Charitable and mutualist movements then developed in Europe in the form of mutual aid and relief societies, which organised free and responsible provision before the State set up generalised insurance and provident systems.

3. At the same time, mechanisms for dealing with certain social risks are being developed in South America⁶. Simon Bolivar, an emblematic figure of the emancipation of the Spanish colonies in South America from 1813 onwards, in his speech at the opening of the Venezuelan Congress on 15 February 1819 in the town of Angostura, identified social security as a component of the most "perfect of political regimes".
4. Then, under the impetus of the German Chancellor Otto von Bismarck, the idea of social security was implemented in the form of compulsory social insurance in which benefits are paid for by contributions (old-age invalidity insurance, health insurance).
5. In 1935, US President Roosevelt signed the Social Security Act into law, introducing a new term that combines "economic security" and "social insurance". After the First World War, social insurance schemes developed rapidly in many parts of the world.
6. In 1941, with the Atlantic Charter, President Roosevelt and British Prime Minister Winston Churchill committed themselves to better labour standards, economic progress and social security for all⁷. At the height of the Second World War, in 1942, the UK government published the Beveridge Plan, named after its principal author - often referred to as the founding text of the welfare state⁹, Lord Beveridge, which resulted in the establishment of the first unified social security system, which, funded by taxation, provided uniform benefits to all members of society¹⁰.

In France, the government's efforts under Pierre Laroque to extend social protection to the entire population led to the creation of a national social security system in 1946.

In Belgium, while the Second World War was in full swing, the social pact was signed by the authorities as well as by employer and trade union representatives. This social pact formalised what had previously developed in an unstructured way. This unique model of collaboration and consultation extends the social rights of workers by making all existing insurances mandatory. In addition, the social pact makes it possible to better organise its financing, with a budget fed by

unemployment in the 20th century showed that poverty was more than a moral problem. The social legislation of the 1930s and 1940s replaced the Poor Laws with a comprehensive system of public welfare services.

⁶ I. DAUGAREILH and M. BADEL (eds.), *op. cit.* p. 11, who refer to the laws of India and the post-Napoleonic Spanish laws. J.-M. SERVAIS, *International Social Security*, Wolters Kluwer, 2013, p. 27, § 38.

⁷ Cl. A. COLLIARD, *Droit international et Histoire diplomatique*, tome 1, Paris, 1955, who quotes the following extract from the joint declaration: "The President of the United States of America and Mr. Churchill, Prime Minister, representing His Majesty's Government in the United Kingdom, having met at sea, deem it advisable to make known certain principles on which they base their hopes for a better future for the world, and which are common to the national policies of their respective countries. [It is their desire to achieve the fullest collaboration among all nations in the field of economy, in order to secure for all the improvement of the condition of workers, economic progress and social security.

⁸ J.-M. SERVAIS, *International Social Security*, *op. cit.* p. 27, which states that the Atlantic Charter was certainly a source of inspiration for the authors of the declaration adopted in Philadelphia on 10 May 1944 by the ILO to update the objectives of the Organisation and to underline its priorities.

⁹ The full report can be found at: <http://pombo.free.fr/beveridge42.pdf>.

¹⁰ P. ROSANVALLON, *La Crise de l'État-providence*, coll. "Points Politique", Paris, Seuil, 1981, p. 45.

personal and employer contributions as well as annual subsidies from the state, as is still the case today¹¹.

7. In 1944, at the turn of the war, the historic Declaration of Philadelphia called for the extension of social security measures and for the promotion of systematic and direct cooperation between social security agencies on a regional and international scale, through regular exchanges of information and the study of common problems related to the administration of social security. A year later, the UN General Assembly adopted the Universal Declaration of Human Rights, Article 22 of which states that "everyone, as a member of society, has the right to social security".
8. Social security, which at the beginning of the 20th century existed in embryonic form in only a few countries, is becoming one of the most important social institutions in contemporary societies, especially in industrialised countries¹². In these countries, social security systems are gradually taking over the responsibility for all those who, for various reasons - health problems, loss of income, the need to provide for children or dependants - need to be supported. Social security has evolved from an instrument of social control to ensure a minimum level of welfare for the needy to a genuine tool for promoting economic development, social cohesion and democracy¹³.
9. Social security or social protection is a key element of the social justice mission that lies at the heart of the ILO's constitutional mandate and has been a major theme of the Organization's standard-setting and activities since its foundation in 1919. The preamble to the ILO Constitution of 1919 calls for the improvement of working conditions through, inter alia, "the protection of workers against general and occupational diseases and accidents arising out of work, the protection of children, young persons and women, and old age and invalidity pensions".
10. In keeping with this mission, the ILO adopted 14 Conventions and 11 Recommendations in the field of social security during its first twenty years of existence, thus transforming workers' aspirations into legal rights and placing the social security movement in the framework of international law. A quarter of a century later, the major challenge is "to make the Organization fit for the tasks it must perform in a world quite different from that of 1919"¹⁴.
11. With the memory of the Great Depression of the 1930s still vivid and the post-war world engaged in the formidable task of reconstruction, the 1944 Declaration of Philadelphia¹⁵ calls on the ILO to "assist in the implementation among the nations of the world of programmes designed to achieve the extension of social security measures to provide a basic income to all those in need of such protection and full medical care" (Article III, *f*) and "the protection of childhood and motherhood" (Article III, *h*), thus extending protection beyond *workers to all persons in need*.

¹¹ G. VANTEMPSCHÉ, *La sécurité sociale des origines à nos jours*, De Boeck POLHIS, 1994; V. DE GREEF and D. ZAMORA, "Le système belge de sécurité sociale: de l'universalisation à la dualisation", in I. DAUGAREILH and M. BADEL (eds.), *La sécurité sociale : universalité et modernité, approche de droit comparé*, Pedone, 2019, pp. 209 et seq. K. VLEMINCKX, *De (r)evolutie van de sociale zekerheid: 1944 tot nu, in fundamentele Sociale zekerheid in onzekere tijden* - M. SOMERS (red.), Minverva progressieve Denktank, 2019, pp. 22 et seq.

¹² International Labour Conference, 100^e session, 2011, General Survey of Social Security Instruments in the Light of the 2008 Declaration on Social Justice for a Fair Globalization, ILC.100/III/1B, p. 5; see also in this sense: J.-M. SERVAIS, *International Social Security*, *op. cit.*, p. 13.

¹³ ILC.100/III/1B, *ibid.*

¹⁴ Opening statement by the Chairman of the Governing Body, Report of Proceedings, International Labour Conference, 26^e Session, Philadelphia, 1944, p. 7.

¹⁵ Declaration concerning the Aims and Purposes of the International Labour Organisation (Declaration of Philadelphia), adopted by the ILC at its 26^e session, Philadelphia, 10 May 1944. The Declaration of Philadelphia is an integral part of the ILO Constitution.

Aiming to establish a world order in which economic, financial and social policies would be pursued in tandem to free people from fear and want, the Declaration of Philadelphia incorporated the new concept of "social security" into the "fundamental principles" that would govern the work of the Organisation, principles that were "of concern to the whole civilised world"¹⁶.

- 12.** The ILO is called upon to work towards "the extension of social security measures to provide a basic income to all those who need such protection, as well as comprehensive medical care". This renewal of the ILO's mandate and mission will lead to the adoption of a series of landmark international Conventions and Recommendations that will contribute to making social security a major institution of the modern state. All of these instruments remain relevant to this day. In 1952, the ILO approved the Social Security (Minimum Standards) Convention (No.° 102).

- 13.** In 1999, the Director-General's report "Decent Work" challenged the ILO to "find solutions that enhance protection while respecting the fundamental principles of social security" in the context of globalization¹⁷. "The Decent Work Agenda, which sets out the ILO's agenda for the 21st century, adds to these various priorities the need to address the social security deficit in the globalized economy by extending social protection to the Third World¹⁸ .

- 14.** With the Decent Work Agenda, the Organisation quickly mobilised, taking the lead in shaping the social dimension of globalisation (2001). Each country is therefore invited to put in place a national strategy to extend social protection to the entire population and to closely correlate this strategy with employment and social policies.

- 15.** In 2003, the ILO launched the "Global Campaign on Social Security and Coverage for All", giving practical effect to the consensus of governments, employers' and workers' organizations on the need to increase social security coverage, particularly in the informal economy¹⁹, and to raise awareness of its constructive role in economic and social development. The 2008 ILO Declaration on Social Justice for a Fair Globalization²⁰ identifies social protection as one of the four strategic objectives of the Organization in order to achieve "the extension of social security to all, including measures to provide a basic income to all those in need of such protection, and the adaptation of its scope and coverage to meet the new needs and uncertainties generated by rapid technical, societal, demographic and economic changes". The Social Justice Declaration thus reaffirms the tripartite commitment to extend social security to all those who need such protection as part of the Decent Work Agenda.

- 16.** In April 2009, as part of the response to the global economic and financial crisis, the UN Chief Executives Board launched the Joint UN Social Protection Floor Initiative with the ILO and WHO as lead agencies²¹ . The social protection floor is subsequently incorporated as a key element of

¹⁶ ILO, Social Security and the Rule of Law, 2011, ILC.100/III/1B, p. 7.

¹⁷ ILO, Decent Work, Report of the Director-General, International Labour Conference, 87^e , 1999.

¹⁸ ILO, Social Security and the Rule of Law, ILC.100/III/1B, p. 7.

¹⁹ Document GB.304/LILS/5.

²⁰ ILO Declaration on Social Justice for a Fair Globalization, ILC, 97^e , Geneva, 2008, I. Scope and principles, A), ii).

²¹ UN Social Protection Floor Initiative, "CEB Initiative 6 on the global economic and financial crisis and its impact on the functioning of the United Nations system. Handbook and strategic framework for joint UN operations at country level", ILO and WHO, Geneva, 2009. See also UN General Assembly Resolution No.° 65/1, "Keeping the promise: Uniting for the achievement of the Millennium Development Goals"

the Global Jobs Pact adopted by the International Labour Conference in 2009. The UN Commission for Social Development adopted a resolution in February 2010 calling on the ILO to "strengthen its social protection strategies, including assistance to countries in developing Social Protection Floors and policies to extend social protection coverage to all", and the ILO's Second African Decent Work Symposium in Yaoundé in October 2010 adopted the "Yaoundé Tripartite Declaration on the Implementation of the Social Protection Floor"²². The Social Protection Floor is also endorsed by other congresses, regional and international fora, including the "Meeting of the European Union, Latin American and Caribbean Countries on the Coordination of Social Security Schemes" in Madrid in May 2010, the 17^e American Regional Tripartite Meeting of the ILO in Santiago in December 2010, the Joint World Conference on Social Work and Development in June 2010, the Asia-Europe Meeting of the ASEM Summit in Brussels in October 2010.

- 17.** In 2011²³, the International Labour Conference, based on the premise that social security is a human right as well as an economic and social necessity, calls for the extension of social security coverage by adopting a two-dimensional approach to establishing comprehensive social security systems, noting that, in order to achieve equitable economic growth, priority should be given to closing coverage gaps. The objective of effective national strategies for the extension of social security in accordance with the country context should be to achieve universal coverage of the population with at least minimum levels of income security and access to essential health care (horizontal dimension) and to progressively build up higher levels of protection based on updated ILO standards on social security (vertical dimension). Thus, the Recommendation on Social Protection Floors will expand and strengthen the existing International Code of Social Security. Recommendation No.° 202 and the ILO Social Security Conventions thus constitute an appropriate and comprehensive normative framework for creating and sustaining comprehensive social security systems²⁴. In order to underline the normative importance of Recommendation No.° 202 on social protection floors, we have deliberately chosen to analyse it under a separate point²⁵.

1.2 The definition of social security or social protection

- 18.** Social security, or social protection, covers all policies and programmes that provide benefits, in cash or in kind, to ensure protection against, inter alia, lack of or insufficient income from work due to any of the following factors: sickness, disability, maternity, occupational injury and disease, unemployment, childcare, old age, death of a family member, poverty, vulnerability and social exclusion. In ILO and UN practice, the terms "social protection" and "social security" are used interchangeably.

(<http://undocs.org/fr/A/RES/65/1>), § 51, which states that "we believe that promoting universal access to social services and establishing a social protection floor can make a real difference in consolidating development gains and promoting further progress. Social protection systems that address and reduce inequality and social exclusion are essential to sustain progress towards the Millennium Development Goals".

²² See ILO (2010c). ILO (2010c).

²³ M. CICHON, C. BEHRENDT and V. WODSAK, The UN Social Protection Floor Initiative - Turning the Tide at the 2011 International Labour Conference, International Policy Analysis, Friedrich-Ebert-Stiftung, Department for Global Policy and Development, January 2011.

²⁴ U. KULKE and E. SAINT-PIERRE GUILBAULT, "The Social Protection Floor Recommendation (No.° 202), 2012: complementing social security standards to close the coverage gap", *International Social Security Review*, vol. 66, 3-4, July-December 2013.

²⁵ This section draws largely on our contribution M. MORSA and L. GUIMARARES, "The work of the Committee on the Recurrent Discussion of Social Protection 100^e and 101^e sessions of the International Labour Conference", *R.B.S.*, 2012, pp. 421 et seq.

Social security is also a human right and as such should be claimed by every member of any national community. It is a particularly effective tool for alleviating poverty and reducing inequality, promoting equity and fostering sustainable economic growth²⁶, including in middle and low income countries. The right to social security is recognised as a human right in the relevant core texts, namely the Universal Declaration of Human Rights²⁷ and the International Covenant on Economic, Social and Cultural Rights²⁸, and enshrined as such in other international legal instruments²⁹ and regional³⁰. While the Universal Declaration of Human Rights is the formal recognition of fundamental human rights, the International Covenant on Economic, Social and Cultural Rights is a treaty, open for signature and ratification, and as such plays a key role in the effective enjoyment of these rights.

2 Analysis of the different instruments adopted by ILO³¹

2.1 The evolution of standards from 1919 to the present day

19. The normative framework that the ILO has adopted in the field of social security since its establishment consists of 31 Conventions and 23 Recommendations³², which have guided the development of social security worldwide and constitute the essence of international social security law³³. Both historically and conceptually, three generations of instruments based on evolving approaches have been developed.

20. The first generation of standards is essentially based on the concept of social insurance. They are based on the principle of compulsory membership, administered by independent non-profit institutions under the administrative and financial control of the state, and provide for the involvement of the insured in the management of the institutions concerned. During the period

²⁶ World of Work Report 2008. Income inequality in a globalized world, Geneva, 2008; UNRISD, Combating poverty and inequality: Structural change, social policy and politics, Geneva, 2010.

²⁷ United Nations, Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 (New York, 1948).

²⁸ United Nations, International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966 (New York, 1966).

²⁹ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 of 18 December 1979, Articles 11, (1), (e), (2), (b), and 14, (2) (New York, 1979); Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, Articles 26, 27, (1), 27, (2), and 27, (4) (New York, 1989); International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, article 5, (e), (iv) (New York, 1965); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, articles 27 and 54 (New York, 1990); Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution A/RES/61/106 of 13 December 2006

³⁰ European Social Charter, adopted by the Council of Europe in 1961 (S.T.E. n° 35); Revised European Social Charter, adopted by the Council of Europe in 1996 (S.T.E. n° 163). Concerning the Social Charter, see D. J.; A. M. K. D. J.; A. M. SWIATKOWSKI, *Charter of Social Rights of the Council of Europe*, Kluwer Law International, 4 January 2007.

³¹ On the common principles underlying the ILO's social security instruments, see J.-M. Servais, *International Social Security*, op. cit. J.-M. SERVAIS, *International Social Security*, op. cit. , pp. 46 et seq.

³² Including conventions and recommendations on social security for seafarers.

³³ J.-M. SERVAIS, *International Social Security*, op. cit. p. 13, which states that the conventions adopted by the ILO in the field of social security "still constitute the most advanced *body of law*".

1919-1939, the ILO adopted no less than 15 Conventions and 11 Recommendations³⁴. Each instrument covers a specific risk. The resulting body of standards makes it possible to draw up the first international inventory of recognised social risks, on the understanding that protection against these risks must not be left to the goodwill of individuals but must be ensured by specific collective mechanisms³⁵. In this respect, Albert Thomas, the first Director of the International Labour Organisation, emphasised that "it is in the general interest of society that the insecurity of the employee should disappear. Since he cannot be foresighted for himself and since improvidence can have bad consequences for the whole social body, the latter must be foresighted for all its members: insurance must be imposed by law, it must be compulsory; the individual cannot evade it"³⁶. "A labour regime based on social justice requires the organisation of effective protection for workers against risks that may endanger their existence and that of their families [...]. The best way to achieve such protection is through the institution of a system of social insurance giving the beneficiaries clearly established rights."³⁷ A. Thomas then concludes that "in spite of their recent origin, the guiding principles of its conventions [on social insurance] and recommendations are penetrating national legislation, helping to improve it or even creating it. Apart from the specific commitments undertaken by the States which ratify them, the international conventions voted by the Conference, by the very fact that they are voted and that they are international, affirm a common will in favour of social insurance, and constitute an agent of emulation and progress"³⁸.

- 21.** The second generation standards embody the much broader concept of social security that is consolidated in the Social Security (Minimum Standards) Convention, 1952 (° 102). The second generation instruments comprise only two Conventions and three Recommendations, but they remain relevant today³⁹. Based on the mandate and concept of the 1944 Declaration of Philadelphia, the second generation of social security standards establish the general principles and legal framework for the creation and proper functioning of comprehensive social security

³⁴ Maternity Protection Convention, 1919 (No.° 3), Maternity Protection (Agriculture) Recommendation, 1921 (No.° 12), Unemployment (Agriculture) Recommendation, 1921 (No.° 11), Workmen's Compensation (Agriculture) Convention, 1921 (No.° 12), Recommendation No.° 17 on Social Insurance (Agriculture), 1921, Convention No.° 17 on Workers' Compensation, 1925, Convention No.° 18 on Occupational Diseases, 1925, Recommendation No.° 22 on Workers' Compensation (Indemnity), 1925, Recommendation No.° 23 on Workers' Compensation (Jurisdiction), 1925, Recommendation No.° 24 on Occupational Diseases, 1925, Convention No.° 19 and Recommendation No.° 25 on Equality of Treatment (Accidents at Work), 1925, °Occupational Diseases Convention, 1934 (Revised),° 42, Sickness Insurance (Industry) Convention, 1927,° 25, Sickness Insurance (Agriculture) Convention, 1927, Recommendation 29,° 35, Old-Age Insurance (Industry, etc.) Convention, 1933,), 1933, Convention No.° 36 on Old-Age Insurance (Agriculture), 1933, Convention No.° 37 on Disability Insurance (Industry, etc.), 1933, Convention No.° 38 on Disability Insurance (Agriculture), 1933, Convention No.° 39 on Death Insurance (Industry, etc.), 1933, Convention No. 40 on Old-Age Insurance (Agriculture), 1933, Convention No. 40 on Old-Age Insurance (Industry, etc.), 1933.), 1933, Disability Insurance (Agriculture) Convention No. 40, 1933, Old-Age and Death Insurance Recommendation No.° 43, 1933, Unemployment Convention No. 44, 1934, Unemployment Recommendation No.° 44, 1934, and Unemployment (Young Persons) Recommendation No.° 45, 1935.

³⁵ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 10.

³⁶ ILO, *Ten Years of the International Labour Organization*, *op. cit.* p. 174 (available online at www.ilo.org/public/libdoc/ilo/1931/31B09_1_fren.pdf).

³⁷ *Ibid*, p. 179.

³⁸ *Ibid*, pp. 189-190.

³⁹ Recommendation No.° 67 on Livelihood Security, 1944, Recommendation No.° 68 on Social Security (Armed Forces), 1944, Recommendation No.° 69 on Medical Care, 1944, Convention No.° 102 on Social Security (Minimum Standards), 1952, Convention No.° 103 and Recommendation No.° 95 on Maternity Protection, 1952, Convention No.° 118 on Equality of Treatment (Social Security), 1962; not to mention the instruments relating to the social security of seafarers

systems. They brought together the different branches of social security into a unified or coordinated system, expanded the inventory of recognized social risks to include the new branches of family allowances and health care coverage, and extended protection to self-employed and non-working populations⁴⁰. Following the adoption of Recommendations Nos.⁰⁵ 67 and 69, the rapid progress made by the social security movement prompted the adoption of a binding instrument capable of giving new impetus to the movement and assisting countries in the construction or reconstruction of their social security systems: Convention No.^o 102, a second-generation instrument establishing a set of minimum standards⁴¹.

22. The third generation instruments continue to build on the model established by Convention No.^o 102 but take social security two steps further by raising the level of protection offered (both in terms of the population covered and the rates and types of benefits provided) and by extending the concept of social security to other forms of social benefits, assistance and services. The third generation standards complete the original architecture conceived in the early 1950s and revise the first generation instruments on the basis of the common principles of organisation, management and financing of social security systems established by Convention No.^o 102⁴². With the adoption in 1988 of Convention No.^o 168 and Recommendation No.^o 176 on the promotion of employment and protection against unemployment, social security was thus correlated with other measures - such as, among others, special employment programmes, active labour market measures, employment services, vocational training measures, vocational guidance, reintegration services - aimed at achieving this objective⁴³.

23. From 1988 onwards, normative action in the field of social security was interrupted for more than twenty years. The low rate of ratification of higher social security standards is justified by the small number of countries that have become new industrial economies. Despite the oil shock of 1973 and the subsequent sharp economic downturn, no substantial new social security standards reflecting this change were adopted after this period. The existing social security standards (first and second generation) are little or not adapted to the new economic and social conditions⁴⁴, to the status of non-nationals and their access to social security, and to globalisation⁴⁵.

⁴⁰ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 11.

⁴¹ Initially, the draft Convention No.^o 102 was to have two levels of standards: a "minimum standard" for less developed countries that wished to establish national social security systems, and a "higher standard" for those that had already developed their own systems. The minimum standard was not to be lower than the standards set by the first generation conventions, while allowing for temporary exceptions for less developed countries, particularly in view of the range of persons protected. Eventually, this approach was abandoned.

⁴² ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* pp. 12-13. In 1964, Convention No.^o 121 and Recommendation No.^o 121 brought together in a single instrument occupational accidents and diseases, which had previously been the subject of separate first-generation instruments. Long-term benefits were also brought together in a single instrument - the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No.^o 128) and Recommendation (No.^o 131) - as a result of the trend towards integrating these three branches into a single unified pension system. Convention No.^o 130 and Recommendation No.^o 134 group medical care and sickness benefits together, reflecting the trend towards comprehensive health insurance schemes. In 1982, the Preservation of Social Security Rights Convention, 1982 (No.^o 157), addressed the issue of the protection of migrant workers and complemented the provisions of the Equality of Treatment (Social Security) Convention, 1962 (No.^o 118), which emphasises equality of treatment and the exportability of benefits.

⁴³ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 13.

⁴⁴ Fragmented labour markets and the growth of flexible, temporary, atypical and precarious forms of employment, as well as their possible extension to the informal sector.

⁴⁵ ILO, "Setting social security standards in a global society", *Social Security Policy Papers*, Paper 2, Social Security Department, 2008.

24. The ILO's current social security mandate, as reaffirmed and updated by the 2008 Declaration on Social Justice for a Fair Globalization, goes far beyond the standards that are supposed to implement it. The means available for this purpose have become insufficient. None of the current social security Conventions can be considered appropriate for the pursuit of the ILO's constitutional mandate to extend social security to all by establishing a social security floor. Rather, the relevant provisions for the implementation of a social security floor can be found in Recommendations No.^{os} 67 and 69. However, due to their legal nature, these instruments do not create obligations for Member States in this respect. Nor does Convention No.^o 102 establish an effective and binding obligation to extend a basic, but comprehensive, set of priority benefits to all persons in a globalised economy and society. In order to complete its task of universalizing social security, the ILO needs to complement its updated body of standards with a powerful instrument that will anchor social security in a new development paradigm and that will be designed in such a way that it can be accepted by all member States.

2.2 The current body of ILO standards: An overview

25. The ILO's body of up-to-date social security standards now consists of eight Conventions and eight Recommendations⁴⁶. The Employment Injury Benefits Convention, 1964 (° 121), the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (° 128), and the Medical Care and Sickness Benefits Convention, 1969 (° 130), together with accompanying Recommendations (°s 121, 131 and 134, set higher requirements for the different contingencies of social security covered by Convention No.^o 102⁴⁷, in particular as regards the personal scope and the minimum levels of benefits to be provided, while having the same approach and structure. The Retention of Social Security Rights Convention, 1982 (° 157), deals with the retention of social security rights of migrant workers and complements the provisions of the Equality of Treatment (Social Security) Convention, 1962 (° 118), by focusing on equality of treatment and the transfer of benefits. The Employment Promotion and Protection against Unemployment Convention, 1988 (° 168), and the Employment Promotion and Protection against Unemployment Recommendation, 1988 (° 176), provide for higher protection for unemployed persons through the provision of benefits in the form of periodic payments, while promoting full, productive and freely chosen employment. The Maternity Protection Convention, 2000 (° 183), and the Maternity Protection Recommendation, 2000 (° 191), ensure that all employed women, including those in atypical forms of dependent work, are entitled to a higher level of maternity benefits in respect of pregnancy, confinement and their consequences. They also contain provisions concerning health protection, employment

⁴⁶ In 2002, the ILO Governing Body confirmed that the following social security Conventions were up to date: Convention No.^o 102 concerning Social Security (Minimum Standards), 1952; Convention No.^o 118 concerning Equality of Treatment (Social Security), 1962; Convention No.^o 121 concerning Employment Injury Benefits, 1964; Convention No.^o 128 concerning Invalidity, Old-Age and Survivors' Benefits, 1967; Convention No.^o 130 concerning Medical Care and Sickness Benefits, 1969; Convention No.^o 157 concerning the Preservation of Social Security Rights, 1982; and Convention No.^o 168 concerning Employment Promotion and Protection against Unemployment, 1988. The Governing Body also confirmed that the following social security Recommendations were up to date: Recommendation No.^o 67 concerning livelihood security, 1944; Recommendation No.^o 121 concerning benefits in respect of employment injury and occupational diseases, 1964; Recommendation No.^o 131 concerning invalidity, old age and survivors' benefits, 1967; Recommendation No.^o 134 concerning medical care and sickness benefits, 1969; Recommendation No.^o 167 concerning the preservation of social security rights, 1983; and Recommendation No.^o 176 concerning employment promotion and protection against unemployment, 1988. The updated corpus of social security standards also includes the following more recent instruments: Convention No.^o 183 on maternity protection, 2000; and Recommendations No.^o 191 on maternity protection, 2000, and No.^o 202 on social protection floors, 2012.

⁴⁷ With the exception of family benefits.

protection and non-discrimination for pregnant and breastfeeding women. Finally, Recommendation No.° 202 completes the updated body of standards by providing guidance on the establishment of social protection floors as an essential element of national social security systems and the design and implementation of national social security policies and strategies aimed at extending social protection coverage and providing higher levels of protection to the greatest number of people as quickly as possible, in line with the guidance provided by ILO social security standards.

2.2.1 Recommendations n^{os} 67 and 69 (1944): enshrining the principle of universality⁴⁸

26. Recommendations no.^{os} 67 and 69 set out a set of guiding principles applicable to all eventualities leading to loss of income and established medical care as a separate branch of social security, with a specific instrument. These two recommendations reflect a radical paradigm shift in social security policies, marked by the desire to ensure the protection not only of workers, but of the entire population. These two recommendations will have the effect of transforming the social insurance systems set up before the war and of orienting them, according to a trend that will become widespread, towards the integration of new categories of population, the widening of the range of risks covered, the granting of benefits proportionate to needs and, in general, the homogenisation of the financing and administration of branches that had previously been separate⁴⁹.

Recommendations No.^{os} 67 and 69 together provide comprehensive protection, the first covering the economic risk of loss of income, the second the biological risks of illness and disability. A few years later, the Social Security (Minimum Standards) Convention, No.° 102, translated the ideas contained in Recommendations No.^{os} 67 and 69 into legal obligations, making social security a separate branch of international law, but it does not require universal coverage or the provision of a comprehensive package of social security benefits guaranteeing protection throughout the life cycle⁵⁰. It was indeed important that the ILO was not be "overtaken" by the facts, in this case the rapid development of integrated social security systems in Western Europe.

^{eos}At the turn of the 19th century, it was noted that while Recommendations Nos. 67 and 69 played a pioneering role in the history of the social security movement, the global community had failed to achieve the stated ambitious goals of "relieving want and preventing destitution"⁵¹. A new model of social security with more effective means was deemed necessary to reduce poverty, while retaining the fundamental principles and objectives enshrined in Recommendations Nos.^{os} 67 and 69. In short, it was time to move from a risk-based model to more integrated forms of social protection⁵².

2.2.2 The Livelihood Security Recommendation, 1944° 67

27. Recommendation No.° 67 brings together in a single instrument all the provisions aimed at ensuring income maintenance in the event of incapacity to work or to obtain employment and recommends the extension of its provisions to all workers, whether employed, self-employed, urban or rural, as well as to their dependants. While social insurance remains the main protection

⁴⁸ J.-M. SERVAIS, *International Social Security*, *op. cit.*, §§ 39-40.

⁴⁹ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 19.

⁵⁰ ILO, *Extending social security to all: A guide through challenges and options*, Geneva, 2010, p. 111.

⁵¹ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 24.

⁵² ILO, *Conclusions concerning the recurrent discussion on social protection (social security)*, 2011, ILC, 100^e, Geneva, 2011, § 6.

mechanism, the Recommendation is the first international instrument to supplement it with social assistance to extend protection to the vulnerable and needy. Recommendation No.° 67 brings together all the mechanisms for providing the replacement income necessary for the establishment of an integrated social security system, a task that will later be carried out by Convention No.° 102.

- 28.** Recommendation No.° 67 is structured around three sets of guiding principles intended to orient the implementation of income security schemes. The first set of guidelines can be described as general (§§ 1-4 of Recommendation No.° 67). From the outset, the Recommendation (§ 1^{er}) urges Member States to establish livelihood security schemes which should relieve need and prevent destitution, restoring to a reasonable level the livelihood lost due to the inability to work (including old age) or to obtain gainful employment or due to the death of the breadwinner. Secondly, this guarantee of livelihood should be established, as far as possible, on the basis of compulsory social insurance, with insured persons meeting the required conditions being entitled, in consideration of the contributions paid to an insurance institution, to benefits payable at rates and in the eventualities laid down by law (§ 2). Finally, with regard to needs not covered by compulsory social insurance, states should provide social assistance appropriate to the needs of each individual (§§ 3-4).

The second set of guiding principles relates to social insurance. Thus, compulsory social insurance should cover all contingencies in which an insured person is prevented from earning a livelihood because of the inability to work or obtain gainful employment, or dies, leaving a family to support, and include certain related contingencies which occur commonly and constitute an excessive burden on limited incomes, insofar as they are not otherwise covered (§ 5)⁵³. In addition, it is envisaged that compensation should be provided for incapacity for work and for death resulting from employment (§ 6). Paragraphs 8-26 of the Recommendation deal with the various eventualities triggering the occurrence of each of the risks covered, the circle of beneficiaries, the level of benefits and their financing. In terms of management, Recommendation No.° 67 (§28) advocates unified or coordinated management in a general system of social security services in which contributors should be represented through their organisations in the bodies which decide or advise on the general lines of management and which present draft legislation or draw up regulations; in short, joint management.

The third set of guidelines relates to social assistance (§§ 28-30). Social assistance complements social insurance with general assistance measures to ensure the welfare of dependent children. Similarly, in the case of invalids, old people and widows who do not receive any social insurance benefits because they or their spouses, as the case may be, were not compulsorily insured, and whose income does not exceed a fixed level, they should receive special subsistence allowances at prescribed rates.

2.2.3 Recommendation No.° 69 on medical care, 1944

- 29.** Recommendation No.° 69 on medical care is based on the idea that the availability of adequate medical care is an "essential element of social security"⁵⁴. Recommendation No.° 69 makes

⁵³ Paragraph 7 of Recommendation No.° 67 proposes a classification of the contingencies to be covered [a) sickness; b) maternity; etc.], but does not include family benefits. Furthermore, §7 excludes any possibility of cumulation between invalidity, old-age and unemployment benefits.

⁵⁴ Recommendation No.° 69, preamble.

medical care the subject of a separate branch of social security and establishes the principle that the nature and extent of the care provided should be defined by legislation (§§ 1-2).

30. The Recommendation advocates that comprehensive health care should be guaranteed to all members of the population, whether or not they are gainfully employed (§ 8); this care should be provided either by a social insurance service, by social assistance or by a public health service.
31. Sections 1 to 7 of Recommendation No.º 69 define the general principles relating to the organisation and management of medical care, both those which fall within the scope of the branch devoted to it and those which are common to the social security system as a whole. With regard to the purpose of the services provided by a health care service via medical institutions, this is to cover both curative and preventive care. As regards the financing of benefits, the recommendation favours the system of collective social insurance by means of regular and periodic payments, either in the form of social insurance contributions, or by means of taxes, or by a mixed system. As to the form of such health care services, the Convention (§ 5) proposes that they should be provided either by a social insurance health care service, supplemented by social assistance in respect of the needs of needy persons not yet covered by social insurance, or by a public health care service.
32. For each of the possible forms, the Convention (§ 6) sets out the conditions that must be met in terms of the scope of beneficiaries and the method of financing. Where the medical care service is constituted in the form of social insurance, the circle of beneficiaries should include every insured person who is a contributor, his or her dependent spouse and dependent children, and any other dependent persons determined by national legislation, as well as any other person insured by virtue of contributions paid on his or her behalf, should be entitled to all the care provided by the service. For persons not yet insured, if they are unable to obtain medical care at their own expense, they should receive it through social assistance. In this case, the financing of the medical care service is of a mixed type, consisting of both contributions from the insured and their employers and subsidies from public funds. When care is provided by a public service (§ 7), the circle of beneficiaries can be described as universal, since every member of the community should be entitled to all the care provided by the service. As for the way it is financed, this should include funds from either a progressive tax levied specifically to maintain the health care service or all health services, or from general revenues. Among the principles relating specifically to the organisation and management of the health care sector, it is noted that all members of the community must be able to benefit at all times and in all places from comprehensive preventive and curative health care under the same conditions and without obstacles or impediments of an administrative, financial or political nature, or otherwise unrelated to their state of health (§ 20). Secondly, medical care must meet the needs of individuals, be provided without time limits, aim for the highest quality of service (§ 46), be provided by highly qualified personnel (§§ 66-74), with a view to preserving, restoring or improving the health of the protected persons, subject to reasonable restrictions that may be imposed by the technical organisation of the service (§ 22).
33. Furthermore, all medical care must be organised rationally throughout the country, with a view to ensuring the greatest possible economy and efficiency (§ 27), be subject to centralised control (§ 24) and be closely coordinated with the country's general health services (§ 19). Recommendation No.º 69 also sets out other general principles applicable to all branches of social security for the medical care branch. Firstly, it is a question of ensuring universal coverage of the population, since the medical care service should include all members of the community, whether

or not they are gainfully employed (§ 8). The health care sector must be based on collective financing in order to ensure its sustainability and progressive development, which promotes social stability and cohesion (§ 4). Furthermore, in accordance with the principle of the general responsibility of the State, it is the responsibility of the central authorities to formulate national health policy and to supervise all medical and general health services (§§ 92-93), so as to guarantee the provision of care and the proper management of all the institutions and services concerned, regardless of the method of financing or management adopted.

- 34.** With regard to the principle of democratic and transparent governance of the social security system, the Recommendation provides that the management of the health care sector should be exercised with the participation of representatives of the protected persons (§ 104), of the contributors as well as of the medical and related professions (§ 111), and provide for a rapid and effective mechanism for lodging complaints or appealing against decisions taken (§§ 112-114).

2.2.4 The Convention No.° 102

2.2.4.1 *Convention No.° 102 makes social security a separate branch of international law*

- 35.** Convention No.° 102, adopted in 1954⁵⁵, has had a considerable influence on the development of social security throughout the world⁵⁶ and can therefore be considered as establishing an internationally accepted definition of the very principle of social security⁵⁷. Unlike previous conventions, Convention No.° 102 defines the objectives to be achieved and not the means to be used. Convention No.° 102 brings together the nine "classic" social security risks, or contingencies, into a single, comprehensive and legally binding instrument⁵⁸. The Convention sets out the basic parameters of social security structured as a social institution, whose sole purpose is to provide beneficiaries and their families with healthy and decent living conditions throughout the covered contingency⁵⁹. The Convention (through its international scope) provides a benchmark for determining whether existing national social security systems meet or exceed

⁵⁵ °D. MAUL, *International Labour Organization: 100 years of global social policy*, ILO publication, 2019, writes of Convention No. 102: "conceived as a kind of codification of various post-war projects to create welfare states, it nevertheless contains a commitment to universal coverage. This was one of the reasons why it triggered an outcry among employers, who voted unanimously against its adoption, with American representatives vehemently opposing "socialized medicine" (Proceedings, International Labour Conference, 35^e Session, Geneva, 1952 (Geneva, ILO, 1953), p. 328.

⁵⁶ A.-S. DUPONT, "Le revenu de substitution en cas d'incapacité de travail consécutive à la maladie", in S. DAGRON, A.-S. DUPONT and K. LEMPEN (eds.), *L'OIT et le droit social en Suisse: 100 ans et après?* Pôle Berenstein, Faculty of Law, University of Geneva, 2019, pp. 59-78, who writes that "Switzerland has not, or has only marginally, allowed itself to be influenced by international conventions, including those it had signed. Its attitude towards ILO Convention No.° 102 shows that it has never had the desire to use it as a model for improving the social protection of people living on its territory. Ratification of the Convention, or more precisely of parts of it, has only taken place when domestic legislation was already in line with the requirements of the International Labour Organisation. The same attitude has been adopted in the framework of the Council of Europe.

⁵⁷ °A few decades after its entry into force, the Committee of Experts is concerned about an increasing trend towards privatisation of some schemes, while Convention No. 102 specifies, in the name of solidarity, that schemes should be financed collectively by contributions or taxes. See ILO. ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations. General report and observations concerning certain countries, Geneva, 85^e ILC session, 1997.

⁵⁸ There are nine main branches of social security: medical care, sickness benefits, unemployment benefits, old-age benefits, benefits for accidents at work and occupational diseases, family benefits, maternity benefits, disability benefits and survivors' benefits.

⁵⁹ ILO, "Social security and the rule of law", 2011, ILC.100/III/1B, *op. cit.*, p. 25.

the level it prescribes. Convention No.^o 102 also establishes quantitative minimum standards of protection for the coverage of the population⁶⁰ and the level of benefits that social security schemes must provide for each of the risks and the conditions under which these benefits are granted⁶¹, as well as the related statistical obligations to demonstrate compliance with the Convention. The Convention sets out a series of key principles to be respected, irrespective of the type of social security scheme:

- the overall responsibility of the State for the provision of benefits and for the proper administration of the institutions and services concerned, in order to ensure the provision of benefits⁶²;
- the participation of protected persons in the administration of social security schemes⁶³;
- the collective financing of social security schemes⁶⁴;
- adjustment of the amount of pensions in payment⁶⁵;
- the right to appeal in the event of refusal of the service or dispute over its quality or quantity⁶⁶.

36. The Convention also establishes the principle of equal treatment between nationals and non-nationals⁶⁷ residing in a given country.

37. In terms of its structure, the Convention No.^o 102 contains 15 separate parts⁶⁸. Parts II to X establish a set of minimum standards of protection relating to the nine categories of social risks: medical care, sickness benefit, unemployment benefit, old-age benefit, benefits in respect of accidents at work or occupational diseases, family allowances, maternity benefit, invalidity benefit and survivors' benefit. In addition to branch-specific provisions, the Convention contains provisions common to all branches which provide for flexible arrangements for ratification and application of the Convention (Part I), a set of quantitative standards for periodic payments (Part XI), equal treatment of non-national residents (Part XII), as well as rules governing the suspension of benefits, the right of appeal, financing and administration (Part XIII).

2.2.4.2 The flexibility of the instrument

38. Convention No.^o 102 allows for à la carte ratification by providing options and flexibility clauses to progressively achieve the widest coverage according to the pace of economic development of individual countries. Thus, according to Articles 2 and 4 of Convention No.^o 102, a ratifying State must accept three of the nine parts relating to benefits. In order to ensure a reasonable balance between the benefit obligations selected, it is imperative that it accepts the provisions relating to at least one of the following five categories: unemployment, employment injury, old age, disability and survivors (Article 2). The Convention further states that Members who ratify only

⁶⁰ Convention No.^o 102, Articles 9, 15, 21, 27, 33, 41, 48, 55 and 61.

⁶¹ Convention No.^o 102, Articles 16, 22, 28, 36, 44, 50, 56, 62, 65, 66 and 67.

⁶² ^o Convention No. 102, Articles 71(3) and 72(2).

⁶³ Convention No.^o 102, Article 72, § 1.

⁶⁴ Convention n^o 102, Article 71, §§ 1 and 2.

⁶⁵ ^oConvention No. 102, Articles 65(10) and 66(8).

⁶⁶ Convention No.^o 102, Article 70.

⁶⁷ ^oTo enable the application of this principle throughout the social security system and to ensure the exportability of benefits in the long term, the Conference adopted in 1962 the Equality of Treatment (Social Security) Convention, No. 118.

⁶⁸ Part XIV contains various provisions concerning the effects of the Convention over time, while Part XV contains the final provisions concerning its ratification and entry into force.

some elements of Parts II to X may subsequently accept the obligations arising from the other Parts and progressively proceed to the full realisation of the Convention's objectives (Article 4). In addition, for those Members whose economies and medical resources are not sufficiently developed (less industrialised countries), Article 3 of the Convention allows them to derogate temporarily⁶⁹ from the provisions on the scope, rate and duration of benefits in certain branches⁷⁰.

39. Convention No.° 102 requires Member States to lay down by law the categories of employees or groups of the economically active population to be protected under each of the branches. Compulsory membership of beneficiaries (Article 5) is one of the permanent features of international social security standards, as it allows the widest possible distribution of risks. Compulsory membership is not only justified on economic grounds, but is also a legal requirement that eligibility for benefits be subject to objective conditions of equal membership for all. The principle of compulsory membership thus laid the foundations for the emergence of a rights-based approach to social security. The Convention is still relevant today and its relevance has never been questioned. Article 6 of the Convention also sets out the conditions under which non-compulsory insurance may be used to provide the required level of protection in certain branches. Thus, such insurance must be controlled by the public authorities or administered jointly by employers and workers, cover a substantial proportion of persons whose earnings do not exceed that of a skilled male worker and, together with other forms of protection, where appropriate, comply with the relevant provisions of the Convention. On the other hand, as regards industrial accidents, family allowances and maternity benefits, voluntary insurance is not accepted, and only compulsory insurance can be taken into account.

2.2.4.3 Convention No.° 102 proposes a minimum configuration of each social security branch

40. For each branch of social security, Parts II to X of Convention No.° 102 set out the *minimum requirements* in six articles⁷¹. While the first article assigns to the State the duty to ensure the provision of the benefits concerned, by means of or in accordance with national legislation or regulations, the other five articles define a set of quantitative and qualitative parameters listed in the margin. The set of values attributed to these parameters determine a minimum level of protection for each branch considered. While it is therefore possible to raise the level of protection by, for example, reducing the length of the probationary or contribution period or increasing the length of time during which the benefit must be paid, setting these basic parameters to values that do not respect the thresholds established by the Convention necessarily implies that the minimum standard prescribed by the Convention is no longer respected.

⁶⁹ Thus, for States which have availed themselves of such derogations, they will be required in the annual report on the application of this Convention which it is required to submit under Article 22 of the Constitution of the International Labour Organisation, to state in respect of each of the derogations of which it has reserved the benefit: (a) that the reasons which it has had for doing so still exist; or (b) that it renounces as from a specified date the right to avail itself of the derogation in question (Article 3, 2, Convention No.° 102).

⁷⁰ More specifically, countries whose economies and medical resources are not yet sufficiently developed are allowed, in view of the nine categories of risk, to limit coverage in an initial phase to certain categories of employees, making up at least 50% of all employees working in industrial enterprises with at least 20 employees.

⁷¹ This configuration includes: the definition of the risk, the personal scope, the type and amount of benefits provided, the duration of the minimum period of affiliation and the duration of compensation and the waiting period (probationary period). The term *probationary period* means either a period of contribution, a period of employment, a period of residence, or any combination of these periods, as prescribed (Article 1(f) of the Convention No° 102).

2.2.4.3.1 Medical care (Articles 7 to 12)

2.2.4.3.1.1 Definition of the risk covered (Article 8)

41. The eventuality covered must include any morbid condition regardless of its cause, pregnancy, childbirth and their aftermath. It is the reimbursement or assumption of responsibility for part of the health care or the purchase of medicines. In general, medical care must be aimed at preserving, restoring or improving the health of the protected person and his or her ability to work and meet personal needs⁷².

2.2.4.3.1.2 Personal scope (Article 9)

42. "Protected persons must include :

- (a) prescribed categories of employees, constituting in total at least 50% of all employees, and the wives and children of employees in those categories;
- (b) prescribed categories of the working population, constituting in the aggregate not less than 20% of all residents, together with the wives and children of members of such categories;
- (c) prescribed categories of residents, constituting in total at least 50% of all residents;
- (d) where a declaration has been made under section 3, prescribed categories of employees, constituting in the aggregate not less than 50 per cent of all employees working in industrial undertakings employing not less than 20 persons, and the wives and children of employees in those categories.

2.2.4.3.1.3 The type and amount of benefits (Article 10)

43. "The services must include at least :

(a) in the case of a morbid condition :

- (i) care by general practitioners, including home visits;
- (ii) specialist care provided in hospitals to in-patients and out-patients and specialist care that may be provided outside hospitals;
- (iii) the supply of essential pharmaceutical products on the prescription of a doctor or other qualified practitioner;
- (iv) hospitalization when necessary;

(b) in the event of pregnancy, childbirth and their consequences :

- (i) prenatal care, care during childbirth and postnatal care, provided either by a doctor or by a registered midwife;
- (ii) hospitalization when necessary.

44. "The benefits provided in accordance with this Article must be aimed at preserving, restoring or improving the health of the protected person and his or her ability to work and to meet personal needs" (Article 10, 3). In addition, "the beneficiary or his breadwinner may be required to contribute to the cost of medical care received in the event of a morbid condition; the rules relating to such contribution must be established in such a way that they do not entail too great a burden" (Article 10, 2).

⁷² M. HUMBLET and R. SILVA, *Standards for the 21st^e century - social security*, ILO, 2002, p. 18.

2.2.4.3.1.4 *The duration of the minimum period of membership (Article 11)*

45. The *above-mentioned* benefits "must, in the event covered, be guaranteed at least to those protected persons who have completed or whose breadwinner has completed a period of probation which may be considered necessary to prevent abuse".

2.2.4.3.1.5 *Duration of compensation and waiting period (Article 12)*

46. The benefits mentioned *above* "must be granted for the entire duration of the contingency covered, with the exception that in the case of a morbid condition, the duration of benefits may be limited to 26 weeks per case; however, medical benefits may not be suspended for as long as sickness benefit is paid and provision must be made to raise the above limit in the case of illnesses provided for by national legislation for which it is recognised that prolonged care is necessary". An exception to this 26-week limit is possible for Member States whose economy and medical resources are not sufficiently developed and which have made use of temporary derogations and drawn up a declaration to this effect annexed to their ratification under Article 3: the duration of benefits may be limited to 13 weeks per case.

2.2.4.3.2 Sick pay (Articles 13-18)⁷³

2.2.4.3.2.1 *Definition of the risk covered (Article 14)*

47. "The eventuality covered must include incapacity for work resulting from a morbid condition and leading to the suspension of earnings as defined by national legislation. In short, it is a question of granting financial assistance to an employee who is ill or unable to work for the duration of his/her absence.

2.2.4.3.2.2 *Personal scope (Article 15)*

48. "Protected persons must include :

- (a) prescribed groups of employees, constituting in total at least 50% of all employees;
- (b) prescribed categories of the working population, forming in total at least 20% of all residents;
- (c) all residents whose resources during the contingency do not exceed prescribed limits in accordance with the provisions of Article 67 (calculation of periodic payments);
- (d) where a declaration has been made under section 3, prescribed categories of employees, constituting in total at least 50% of all employees working in industrial undertakings employing at least 20 persons.

2.2.4.3.2.3 *The type and amount of benefits (Article 16)*

49. As for the type and amount of the benefit, if it concerns categories of employees or the working population, then the benefit will be a periodic payment calculated in accordance with the provisions of either Article 65 or Article 66 (i.e. at least 40-45-50% of the beneficiary's last salary or at least 40-45-50% of the national reference salary). However, in the case of all residents, the benefit will be a periodic payment calculated in accordance with the provisions of Article 67 (i.e. the prescribed minimum amount).

⁷³ J.-M. SERVAIS, *International Social Security*, op. cit. pp. 68 et seq.

2.2.4.3.2.4 *The duration of the minimum period of membership (Article 17)*

50. The benefit referred to in Article 16 shall be guaranteed at least to those protected persons who have completed such a period of probation as may be considered necessary to prevent abuse.

2.2.4.3.2.5 *Duration of compensation and waiting period (Article 18)*

51. The benefit must be granted for the entire duration of the contingency, provided that the duration of the benefit may be limited to 26 weeks per case of sickness, with the possibility of not providing the benefit for the first three days of suspension of earnings (waiting days). For Member States whose economy and medical resources have not reached a sufficient level of development and which have made use of temporary derogations and drawn up a declaration to this effect annexed to their ratification under Article 3, the duration of the benefit may be limited either to a period such that the total number of days for which sickness benefit is granted in a year is not less than ten times the average number of persons protected during the same year, or to thirteen weeks per case of sickness, with the possibility of not granting the benefit for the first three days of suspension of earnings

2.2.4.3.2.6 *Unemployment benefits (Articles 19 to 24)*⁷⁴

2.2.4.3.2.6.1 *Definition of the risk covered (Article 20)*

52. "The contingency covered must include suspension of earnings - as defined by national legislation - due to the inability to obtain suitable employment in the case of a protected person who is capable of and available for work. In short, it is the provision of financial support to any unemployed person.

2.2.4.3.2.6.2 *Personal scope (Article 21)*

53. "Protected persons must include :

- (a) prescribed groups of employees, constituting in total at least 50% of all employees;
- (b) all residents whose resources during the contingency do not exceed prescribed limits in accordance with the provisions of Article 67 (calculation of periodic payments);
- (c) where a declaration has been made under Article 3, prescribed categories of employees, constituting in total not less than 50% of all employees working in industrial undertakings employing not less than 20 persons.

2.2.4.3.2.6.3 *The type and amount of benefits (Article 22)*

54. As for the type and amount of the benefit, if it concerns categories of employees, then the benefit will be a periodic payment calculated in accordance with the provisions of either Article 65 or Article 66 (i.e. at least 40-45-50% of the beneficiary's last salary or at least 40-45-50% of the national reference salary). However, in the case of all residents, the benefit will be a periodic payment calculated in accordance with the provisions of Article 67 (i.e. the prescribed minimum amount).

⁷⁴ *Ibid.* pp. 92 et seq.

2.2.4.3.2.6.4 *The duration of the minimum period of affiliation (Article 23)*

55. The benefit referred to in Article 22 must be guaranteed at least to protected persons who have completed a period of training which may be considered necessary to avoid abuse. In addition, unemployment benefit may not be paid for a waiting period not exceeding seven days for each case of suspension of earnings⁷⁵.

2.2.4.3.2.6.5 *Duration of compensation and waiting period (Article 24)*

56. The benefit referred to in Article 22 shall be granted for the duration of the contingency. However, the duration of the benefit may be limited to 13 weeks in a 12-month period where classes of employees are protected or to 26 weeks in a 12-month period where all residents whose resources during the contingency do not exceed prescribed limits are protected.

57. In the case of seasonal workers, the duration of the benefit and the waiting period may be adapted to the conditions of employment. This provision is also found in Convention No.º 168.

2.2.4.3.3 *Old-age benefits (Articles 25 to 30)*⁷⁶

2.2.4.3.3.1 *Definition of the risk covered (Article 26)*

58. The contingency covered will be survival beyond a prescribed age (determined by or under national legislation). However, the prescribed age shall not exceed 65 years. However, a higher age may be set by the competent authorities, having regard to the working capacity of older persons in the country concerned. The aim is therefore to provide financial support to any person considered too old to be gainfully employed. In addition, national legislation may suspend benefits if the person who would have been entitled to them engages in certain prescribed gainful activities, or may reduce contributory benefits where the beneficiary's earnings exceed a prescribed amount, and non-contributory benefits where the beneficiary's earnings, or other resources, or both, exceed a prescribed amount.

2.2.4.3.3.2 *Personal scope (Article 27)*

59. "Protected persons must include :

- (a) prescribed groups of employees, constituting in total at least 50% of all employees;
- (b) prescribed categories of the working population, forming in total at least 20% of all residents;
- (c) all residents whose resources during the contingency do not exceed prescribed limits in accordance with the provisions of Article 67 (calculation of periodic payments);
- (d) where a declaration has been made under Article 3, prescribed categories of employees, constituting in total not less than 50% of all employees working in industrial undertakings employing not less than 20 persons.

⁷⁵ Convention No.º 168 allows this waiting period to be extended to ten days for countries with temporary derogations.

⁷⁶ J.-M. SERVAIS, *International Social Security*, *op. cit.* pp. 76 et seq.

2.2.4.3.3.3 *Type and amount of benefits (Article 28)*

60. As for the type and amount of the benefit, if it concerns categories of employees or the working population, then the benefit will be a periodic payment calculated in accordance with the provisions of either Article 65 or Article 66 (i.e. at least 40-45-50% of the beneficiary's last salary or at least 40-45-50% of the national reference salary). However, in the case of all residents, the benefit will be a periodic payment calculated in accordance with the provisions of Article 67 (i.e. the prescribed minimum amount).

2.2.4.3.3.4 *The duration of the minimum period of affiliation (Article 29)*

61. Convention No.º 102 refers to a maximum qualifying period that may be required to receive benefits up to the prescribed minimum amount. This period consists either of a period of contributions or employment which may not exceed thirty years⁷⁷, or a period of residence which may not exceed twenty years (Article 29, 1). Furthermore, these conventions also refer to the minimum qualifying period that may be prescribed for entitlement to benefits. Thus, where the granting of old-age benefits is subject to the completion of a minimum period of contribution or employment, reduced benefits must be guaranteed to persons who have completed a qualifying period of fifteen years of contribution or employment (Article 29(2)). In this respect, the Convention leaves it to national legislation to determine the conditions under which the probationary period must be completed, provided that it does not exceed the abovementioned periods.

2.2.4.3.3.5 *Duration of compensation and waiting period (Article 30)*

62. Benefits must be provided for the duration of the contingency.

2.2.4.3.4 *Benefits in the event of an accident at work or occupational disease (Articles 31 to 38)*

2.2.4.3.4.1 *Definition of the risk covered (Article 32)*

63. The contingency covered by these instruments includes: morbid condition, incapacity for work, disability or diminution of physical integrity resulting from an occupational accident or prescribed occupational disease. The contingency also includes the loss of livelihood suffered as a result of the death of the breadwinner as a result of an occupational injury.

2.2.4.3.4.2 *Personal scope (Article 33)*

64. "Protected persons must include :

(a) prescribed classes of employees, constituting in the aggregate not less than 50% of all employees and, for benefits payable on the death of the breadwinner, also the wives and children of employees in those classes ;

(b) where a declaration has been made under Article 3, prescribed categories of employees, constituting in the aggregate not less than 50% of all employees working in industrial undertakings

⁷⁷ More flexible rules are provided for in these two instruments where all working persons are protected (Article 29(1)(b) of Convention No.º 102).

employing not less than 20 persons and, for the benefits to which the death of the breadwinner gives entitlement, also the wives and children of employees in those categories."

2.2.4.3.4.3 *Type and amount of benefits (Articles 34 and 36)*

65. The benefits provided for in Convention No.° 102 are of three kinds: medical benefits, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity) and, where appropriate, cash benefits in the event of the death of the breadwinner. As regards *medical care*, this should be aimed at preserving, restoring or improving the victim's health and ability to work and to meet personal needs. This care should include care by general practitioners and specialists for in-patients and out-patients, including home visits; dental care; nursing care at home, in a hospital or other medical institution; maintenance in a hospital, convalescent home, sanatorium or other medical institution; dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances and eyeglasses; care provided by a member of another profession recognised as related to the medical profession, under the supervision of a doctor or dentist.
66. *Cash benefits* payable in the event of incapacity for work, loss of earning capacity or corresponding diminution of physical integrity and in the event of the death of the breadwinner should be paid in the form of periodic payments. In the event of temporary incapacity for work, total loss of earning capacity, where it is likely that this loss will be permanent, or a corresponding reduction in physical integrity, the amount of these payments must reach, for a typical beneficiary (a man with a wife and two children), 50% of the reference wage for agreement No° 102. As regards partial loss of earning capacity, where it is likely that this loss will be permanent, the amount of the benefit will correspond to a fair proportion of that payable in the event of total loss of earning capacity. Convention No.° 102 nevertheless allows benefits due in the event of permanent incapacity to be converted into a lump sum payment when the degree of incapacity is minimal or when the competent authority is satisfied that the sum so paid will be used judiciously.
67. Finally, the amount of the benefit paid to survivors in the event of the death of their breadwinner must be such that, for a widow with two children, it represents at least 40% of the reference earnings for Convention No.° 102.
68. As with old-age and other long-term benefits, Convention No.° 102 provides for the revision of the amount of periodic payments following significant changes in the general level of earnings or the cost of living. It should be noted, however, that Convention No.° 121 stresses the exceptional nature of this possibility and makes it subject to the victim's agreement. Convention No.° 121 also allows such a conversion for States that do not have the administrative means to ensure regular service of periodic payments.

2.2.4.3.4.4 *The duration of the minimum period of affiliation (Article 37)*

69. Unlike other contingencies, entitlement to benefits in the event of an occupational injury cannot be made subject to a qualifying period, regardless of whether medical or cash benefits are

involved. Benefits are due from the first day of the occurrence of the contingency without a waiting period. However, only in the case of incapacity for work resulting from an occupational injury, Agreement No.º 102 allows cash benefits not to be paid for the first three days for each case of suspension of earnings.

2.2.4.3.4.5 *Duration of compensation and waiting period (Article 38)*

70. "The benefits referred to in Articles 34 and 36 must be granted for the entire duration of the contingency; however, in the case of incapacity for work, the benefit may not be granted for the first three days in each case of suspension of earnings.

2.2.4.3.5 *Family benefits (Articles 39 to 45)*⁷⁸

2.2.4.3.5.1 *Definition of the risk covered (Article 40)*

71. The eventuality covered by the agreement is "the care of a child as prescribed". The term "child" means a child below the age at which compulsory schooling ends or a child under 15 years of age. The Convention leaves it to national legislation to determine the number of children for whom benefits are payable.

2.2.4.3.5.2 *Personal scope (Article 41)*

72. "Protected persons must include :

- (a) prescribed groups of employees constituting in total at least 50% of all employees;
- (b) prescribed categories of the working population forming in total at least 20% of all residents;
- (c) all residents whose resources during the contingency do not exceed prescribed limits;
- (d) where a declaration has been made under Article 3, prescribed categories of employees, constituting in total not less than 50% of all employees working in industrial undertakings employing not less than 20 persons.

2.2.4.3.5.3 *Type and amount of benefits (Articles 42 and 44)*

73. The agreement provides for the granting of either cash benefits or benefits in kind (provision of food, clothing, accommodation, holiday accommodation or household assistance) or a combination of both. Unlike the other contingencies, the level of family benefits is not determined in relation to a typical beneficiary but in a global way. Thus, the total value of benefits granted for the whole country must be such that it represents :

- or 3% of the salary of an ordinary adult male labourer, multiplied by the total number of children of all protected persons;
- or 1.5% of the above salary, multiplied by the total number of children of all residents.

⁷⁸ J.-M. SERVAIS, *International Social Security*, op. cit. pp. 89 et seq.

2.2.4.3.5.4 *The duration of the minimum period of affiliation (Article 43)*

74. Entitlement to family benefits may be conditional on the completion of a qualifying period, which may consist of either three months of contributions or employment or one year of residence. Benefits must be granted for the duration of the contingency, i.e. at least until the child's fifteenth year or the age at which compulsory schooling ends.

2.2.4.3.5.5 *Duration of compensation and waiting period (Article 45)*

75. "Where benefits consist of a periodic payment, they must be provided for the duration of the contingency.

2.2.4.3.6 *Maternity benefits (Articles 46 to 52)*⁷⁹

2.2.4.3.6.1 *Definition of the risk covered (Article 47)*

76. According to Convention No.^o 102, the eventuality covered must include, on the one hand, medical benefits justified by pregnancy, childbirth and their aftermath and, on the other hand, the resulting suspension of earnings.

2.2.4.3.6.2 *Personal scope (Article 48)*

77. "Protected persons must include :

(a) all women belonging to prescribed categories of employees, such categories constituting in the aggregate not less than 50 of all employees, and, in respect of medical benefits in the event of maternity, also the wives of men belonging to the same categories;

(b) all women belonging to prescribed categories of the working population, such categories constituting in the aggregate not less than 20% of all residents, and, as regards medical benefits in the event of maternity, also the wives of men belonging to the same categories;

(c) where a declaration has been made under Article 3, all women belonging to prescribed classes of employees, such classes constituting in the aggregate not less than 50 per cent of all employees working in industrial undertakings employing not less than 20 persons, and, in respect of medical benefits in the event of maternity, also the wives of men belonging to such classes."

2.2.4.3.6.3 *The type and amount of benefits (Articles 49 and 50)*

78. Convention No.^o 102 provides for the granting of maternity medical benefits and, in the event of suspension of earnings as a result of pregnancy, childbirth and their aftermath, the payment of cash benefits for a period of at least twelve weeks. Medical benefits must include at least the care given before, during and after childbirth by a doctor or a qualified midwife, as well as hospitalisation when necessary. The minimum amount of cash benefits must be at least 45% of the reference wage. It should be noted that convention no.^o 102 is a convention devoted exclusively to social security and considers maternity only from that angle, whereas convention no.^o 183, like conventions no.^{os} 3 and 103, is specifically devoted to maternity protection and therefore provides for much more extensive benefits.

⁷⁹ *Ibid.* pp. 83 et seq.

79. Women who are absent from work due to maternity leave should receive cash benefits at a level that enables them to support themselves and their child in good health and at an adequate standard of living. If these benefits are determined by reference to previous earnings, the amount should not be less than two-thirds of such earnings. If the benefits are determined by other methods, their amount shall be of the same order of magnitude as that resulting on average from the determination of the amount of benefits by reference to previous earnings. However, for States with insufficiently developed economies and social security systems, the level of cash benefits may be equivalent to that of benefits granted in the event of sickness or temporary incapacity for work. Recommendation No.^o 191 encourages Member States to increase the level of maternity benefits to the full amount of the worker's previous earnings. The medical benefits granted to protected persons should include prenatal care, care related to childbirth, postnatal care and hospitalization when necessary.

2.2.4.3.6.4 The duration of the minimum period of affiliation (Article 51)

80. Convention No.^o 102 allows entitlement to benefits to be conditional on the completion of a period of probation considered necessary to avoid abuse. Once entitlement to benefits is recognised, they must be granted for the full duration of the contingency, although cash benefits may be limited to 12 weeks. However, if legislation prescribes or permits maternity leave in excess of 12 weeks, the worker must receive cash benefits for the full duration of the leave.

2.2.4.3.6.5 Duration of compensation and waiting period (Article 52)

81. "The benefits referred to in Articles 49 and 50 shall be granted for the duration of the contingency covered; however, periodic payments may be limited to twelve weeks, unless a longer period of abstention from work is imposed or permitted by national legislation, in which case payments may not be limited to a period of lesser duration.

2.2.4.3.7 Invalidity benefits (Articles 53 to 58)⁸⁰

2.2.4.3.7.1 Definition of the risk covered (Article 54)

82. The contingency covered is the inability to perform an occupational activity where it is likely that the inability will be permanent or will continue after the period during which the person is entitled to temporary incapacity benefits. Recommendation No.^o 131 also recommends that incapacity to engage in an occupation involving substantial remuneration be taken into account.

2.2.4.3.7.2 Personal scope (Article 55)

83. "Protected persons must include :

- (a) prescribed groups of employees, constituting in total at least 50% of all employees;
- (b) prescribed categories of the working population, forming in total at least 20% of all residents;
- (c) all residents whose resources during the contingency do not exceed prescribed limits in accordance with the provisions of Article 67;

⁸⁰ *Ibid.* pp. 70 et seq.; see §§ 170-174 concerning the reintegration of people with disabilities.

(d) where a declaration has been made under section 3, prescribed categories of employees, constituting in total at least 50% of all employees working in industrial undertakings employing at least 20 persons.

2.2.4.3.7.3 Type and amount of benefits (Articles 56 and 57)

84. The benefits must be granted in the form of periodic payments, the amount of which must correspond, for a typical beneficiary (a man with a wife and two children), to at least 40% of the reference salary for Convention No.° 102. As with old-age benefits, Convention No.° 102 provides for the revision of the amount of the pension following significant changes in the general level of earnings or the cost of living.

2.2.4.3.7.4 The duration of the minimum period of affiliation (Article 51)

85. Invalidity benefits at the level provided for in the conventions must be granted to protected persons who have completed a qualifying period corresponding to 15 years of employment or contributions or 10 years of residence. As with old-age benefits, if the granting of invalidity benefits is subject to the completion of a minimum period of contributions or employment - or, according to Convention No.° 128, residence - reduced benefits must be guaranteed to persons who have completed a qualifying period of five years of contributions, employment or residence. Where all active persons are protected, more flexible rules apply for both the full and the reduced disability pension.

2.2.4.3.7.5 Duration of compensation and waiting period (Article 58)

86. "The benefits referred to in Articles 56 and 57 shall be granted for the duration of the contingency or until replaced by an old-age benefit.

2.2.4.3.8 Survivors' benefits (Articles 59 to 64)⁸¹

2.2.4.3.8.1 Definition of the risk covered (Article 60)

87. The eventuality covered is the loss of livelihood suffered by the widow or children as a result of the death of the breadwinner. The protection therefore covers the widow who was dependent on the deceased breadwinner as well as the children whose breadwinner (father or mother) has died. The term "child" refers to a child who is below the age at which compulsory schooling ends or a child under the age of 15 (whichever is higher). As regards the widow, Convention No° 102 allows entitlement to benefits to be conditional on the presumption that she is incapable of supporting herself.

2.2.4.3.8.2 Personal scope (Article 61)

88. "Protected persons must include :

- (a) the wives and children of breadwinners in prescribed categories of employees, such categories constituting in total at least 50% of all employees;
- (b) the wives and children of breadwinners in prescribed categories of the labour force, such categories constituting in total at least 20% of all residents;

⁸¹ *Ibid.* pp. 74 ff.

(c) where they are residents, all widows and children who have lost their breadwinner and whose resources during the event covered do not exceed prescribed limits in accordance with the provisions of Article 67;

(d) where a declaration has been made under section 3, the wives and children of breadwinners belonging to prescribed categories of employees constituting in the aggregate at least 50 per cent of all employees working in industrial undertakings employing at least 20 persons.

2.2.4.3.8.3 Type and amount of benefits (Articles 62 and 63)

89. Under Convention No.º 102, benefits must be granted in the form of periodic payments, the amount of which must correspond for a typical beneficiary (widow with two children) to at least 40% of the reference wage. This rate is increased to 45% by Convention No.º 128 and to 55% by Recommendation No.º 131. This instrument also recommends, as for old-age and survivors' benefits, that national legislation should fix the minimum amount of benefits so as to ensure that the beneficiary has a minimum subsistence level and that the amount of these benefits should be increased in certain circumstances, in particular for beneficiaries whose condition requires the assistance of a third person. Survivors' benefits must be granted for the duration of the contingency. They are therefore long-term benefits which, like old-age and disability benefits, must be reviewed following significant changes in the general level of earnings or the cost of living.

2.2.4.3.8.4 The duration of the minimum period of affiliation (Article 63)

90. The convention contains a number of provisions relating to the period of probation which the breadwinner must, where applicable, have completed in order for survivors' benefits of the level prescribed by these conventions to be guaranteed to protected persons. The qualifying period may consist either of a period of contributions or employment not exceeding fifteen years or a period of residence not exceeding ten years. As in the case of old-age and invalidity benefits, if the granting of survivors' benefits is subject to the completion of a period of contribution or employment, reduced benefits should be guaranteed to protected persons whose breadwinner has completed a qualifying period of five years of contribution, employment or residence. Where the wives and children of all working persons are protected, more flexible rules apply for both full and reduced pensions.

2.2.4.3.8.5 Duration of compensation and waiting period (Article 64)

91. "The benefits referred to in Articles 62 and 63 must be provided for the duration of the contingency.

2.2.4.3.9 Provisions common to the different categories of benefits

2.2.4.3.9.1 Exhaustive list of grounds for suspension of benefits (Article 69)

92. Convention No.º 102 contains a list of circumstances in which the payment of the benefit due to the insured may be suspended for a specified period, including those where the behaviour of the beneficiary is at issue, in which case the suspension of the compensation constitutes a sanction. The list includes various cases such as, for example, when the person concerned tries to obtain the benefits fraudulently; if he commits a crime or offence which causes the risk to materialise; if he fails to use the appropriate services available to him (medical services, rehabilitation services, employment services); or if he does not observe the prescribed rules concerning the

occurrence or continuation of the risk or the behaviour of the recipients. It is important to emphasise that the list of reasons for suspension of benefits set out in Article 69 is exhaustive and therefore prohibits the suspension of benefits in all other circumstances. The sanctions provided for in the Convention are offset by the recognition of a right of appeal (Article 70) in the event of refusal of benefits or disputes about the quality or quantity of benefits⁸².

2.2.4.3.9.2 Financing and administration, participatory management (Articles 71 and 72)

93. Social protection under Convention No^o 102 may be provided through social insurance, social assistance or universal public service schemes, so as to leave Member States a wide choice as to how to organise, finance and administer protection schemes.

94. Social security systems may be administered by a public administration, by an institution governed by public authorities, or by any other body, provided that representatives of the persons protected may participate in or be associated with its management. National legislation may also provide for the participation of representatives of employers and public authorities, in other words, tripartite management. This participation of the social partners in the administration of social security institutions has played a crucial role in the proper management of protection systems and is enshrined in all three generations of ILO instruments. In this respect, the Employment Promotion and Protection against Unemployment Convention, 1988 (No.^o 168), reinforces the principle of participatory management by guaranteeing the participation in an advisory capacity of representatives of employers, as well as representatives of protected persons, even in cases where management is directly carried out by a public administration accountable to a parliament.

2.2.4.3.9.3 General responsibility of the State

95. The Member shall assume general responsibility for the provision of benefits under this Convention and shall take all necessary measures to achieve this end (Article 71(3)). To compensate for the absence of detailed provisions concerning the financing and administration of social security, ILO social security instruments assign general responsibility to the State for the proper administration of social security institutions and services and for the provision of the corresponding benefits. The principle of general state responsibility also has the effect of preventing the state from invoking decentralisation of administration to absolve itself of responsibility for the mismanagement of national social security systems or their failure to provide effective protection. The Committee on the Application of Standards considers that the State's power of control in no way authorises it to use the financial resources of the social security system for purposes other than financing protection measures, which would inevitably have the effect of undermining the citizen's confidence in the institutions responsible for providing protection⁸³.

⁸² It should be noted that under Article 70(3) of Convention No^o 102, where applications are brought before courts specially established to deal with social security matters and in which the protected persons are represented, the right of appeal may not be granted.

⁸³ ILO, *Social Security and the Rule of Law*, 2011, ILC.100/III/1B, *op. cit.* p. 31.

2.2.5 The Employment Injury Benefits Convention, 1964 (° 121) and Recommendation (° 121)⁸⁴

96. The contingencies covered by Convention No.° 121 include: morbidity, incapacity for work, disability or loss of capacity due to an occupational injury or disease and loss of livelihood⁸⁵ due to the death of the breadwinner as a result of occupational injuries and diseases. It is up to States to define the concept of "accident at work", including the conditions under which this concept applies to commuting accidents. Convention No.° 121 sets out the cases in which accidents are to be taken into account by national legislation as accidents at work and diseases are to be recognized as occupational under prescribed conditions⁸⁶. The national list of occupational diseases should include at least the diseases listed in Table I attached to Convention No.° 121. Recommendation No.° 121 specifies the cases in which accidents should be considered as accidents at work by national legislation, as well as the conditions under which the occupational origin of the disease should be presumed. According to Convention No.° 121, all employees, including apprentices, in the public and private sectors and in cooperatives must be protected⁸⁷. Recommendation No.° 121 calls for the progressive extension of the application of the legislation to those categories of employees who would otherwise have been excluded from the protection provided by the Convention. It also recommends that States should provide benefits, where appropriate through voluntary insurance, in particular to prescribed categories of self-employed workers as well as to certain categories of self-employed workers. The convention furthermore sets out three types of benefits: medical care⁸⁸, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity)⁸⁹, and cash benefits in the event of the death of the breadwinner⁹⁰. As regards the amount of the benefits awarded to survivors in the event of the death of their breadwinner, it must be such that, for a widow with two children, it represents at least 50% of the reference earnings for Convention No.° 121. In addition, victims whose condition requires the constant assistance of a third person must receive additional compensation. In addition, a benefit for funeral expenses, the amount of which must not be less than the normal

⁸⁴ J.-M. SERVAIS, *International Social Security, op. cit.* pp. 60 et seq.

⁸⁵ These are prescribed categories of beneficiaries, namely: the widow, as prescribed, or, as the case may be, the disabled and dependent widower, as well as the dependent children of the deceased and such other persons as may be designated by legislation (usually parents, grandparents, etc.).

⁸⁶ With regard to the concept of occupational disease, Convention No.° 121 offers the State three options: either to establish, by legislation, a list of diseases including at least the diseases listed in Table I of the Convention, which will be recognised as occupational diseases; or to include in its legislation a definition of occupational diseases which is sufficiently broad to cover the diseases listed in Table I of the Convention; or, finally, to establish by legislation a list of diseases supplemented by a general definition of the occupational diseases

⁸⁷ The personal scope of application is broader than that of Convention No.° 102.

⁸⁸ This care should be aimed at preserving, restoring or improving the victim's health and ability to work and to meet personal needs. This care should include care by general practitioners and specialists to in-patients and out-patients, including home visits; dental care; nursing care at home, in a hospital or other medical institution; maintenance in a hospital, convalescent home, sanatorium or other medical institution; dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances and eyeglasses; care provided by a member of another profession recognised as related to the medical profession, under the supervision of a doctor or dentist. Convention No.° 121 also provides for emergency care at the workplace for victims of serious accidents and for repeat care for victims of minor injuries which do not result in a break in work. For states with temporary derogations, the scope of care to be provided is more limited.

⁸⁹ In the case of partial loss of earning capacity, where it is likely that the loss will be permanent, the amount of the benefit will be a fair proportion of that payable in the case of total loss of earning capacity.

⁹⁰ Cash benefits due in the event of incapacity for work, loss of earning capacity, or a corresponding reduction in physical integrity and in the event of the death of the breadwinner should be paid in the form of periodic payments. In the event of temporary incapacity for work, total loss of earning capacity, where it is likely that this loss will be permanent, or a corresponding reduction in physical integrity, the amount of these payments must reach, for a typical beneficiary (a man with a wife and two children), 50% of the reference wage for agreement No.° 102. This rate is increased to 60% by Convention No.° 121. In addition, Recommendation No.° 121 recommends that the amount of benefits should not be less than two-thirds of the victim's previous earnings.

cost of the funeral, must also be provided for by the legislation. In addition, States must take measures to prevent occupational accidents and diseases, provide rehabilitation services and take measures to facilitate the placement of disabled persons in suitable employment.

2.2.6 The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (° 128) and Recommendation (° 131)

- 97.** Convention No.° 128 covers all employees, including apprentices, making up at least 75% of the total economically active population, or all residents whose resources during the contingency do not exceed certain limits. The periodic payment of disability benefits should reach at least 50% of the reference wage. In addition, the convention provides for the adoption of measures in favour of rehabilitation services.
- 98.** With regard to old-age benefits, while Convention No.° 102 takes into account the working capacity of the elderly, Convention No.° 128 takes into account other criteria such as appropriate demographic, economic and social criteria, supported by statistics. Derogations will therefore have to be based on objective criteria supported by statistics on, for example, life expectancy, the activity rate of older persons, etc. In addition, where the retirement age is set at 65 or over, Convention No.° 128 provides that this age should be lowered for persons who have been employed in work considered arduous or unhealthy. Recommendation No.° 131 also calls for a lowering of the age of entitlement to old-age benefits for those categories of persons for whom such a measure would be justified on social grounds. Recommendation No.° 131 calls for the gradual extension of the right to old-age benefits to casual workers and to all economically active persons. The aim of the relevant provisions of Conventions No.°s 102 and 128 is to guarantee protected persons of a certain age a decent standard of living for the rest of their lives. Thus, these instruments provide for the granting of benefits in the form of periodic payments throughout the contingency, i.e. until the death of the person concerned. The level of benefits must reach, for a typical beneficiary (a man with a wife who has reached pensionable age), after the completion of the maximum qualifying period, 40% of the reference salary for Convention No.° 102. Convention No.° 128 increases this percentage to at least 45% of the reference wage and Recommendation No.° 131 to 55%. The latter also provides that national legislation should fix the minimum amount of old-age benefits so as to ensure the minimum subsistence level and that the amount of benefits should be increased in certain circumstances, in particular for beneficiaries whose condition requires the constant assistance of a third person. Furthermore, as pensioners are indeed particularly sensitive to the risks of inflation, as the pension may be their main or even only source of income, the adjustment of these benefits in the long term appears necessary to take account of changes in the cost of living and to avoid a loss of their real value. Thus, both Convention No.° 102 and Convention No.° 128 lay down the principle of revising the amount of benefits following significant changes in the general level of earnings or the cost of living. These instruments merely lay down this principle, leaving it to the States to determine the details (method and frequency of revision).

2.2.7 The Medical Care and Sickness Benefits Convention, 1969 (No.° 130) and Recommendation No.° 134⁹¹

- 99.** This agreement covers both the possibility of medical care benefits and sickness benefits. As regards the scope of beneficiaries, agreement No.° 130 is more protective than agreement No.°

⁹¹ J.-M. SERVAIS, *International Social Security*, op. cit. pp. 64 et seq.

102. Indeed, all employees, including apprentices, or at least 75% of the total economically active population or all residents whose resources do not exceed certain limits should be covered by both contingencies. Recommendation No.° 134 calls for the phased extension of medical care to the entire working population and to all residents. As far as medical care is concerned, employees' wives and children are also covered. Convention No.° 130 provides, in addition to the medical care required under Convention No.° 102, coverage of dental care and medical rehabilitation, including the provision, maintenance and replacement of prosthetic or orthopaedic appliances. It provides for entitlement to benefits for the entire duration of the contingency and allows fewer possibilities to limit the duration of sickness benefits; only when the beneficiary ceases to belong to one of the groups of protected persons and the illness began while he or she still belonged to one of these groups can the duration of benefits be limited to 26 weeks. The two conventions⁹⁵ 102 and 130 admit that beneficiaries may be required to contribute to the cost of medical care received. However, this participation must not entail too great a burden, nor, according to Convention No.° 130, risk making medical and social protection less effective. Entitlement to benefits may be conditional on the completion of a probationary period which may be considered necessary to avoid abuse. A qualifying period may refer to a period of contribution, employment, residence or a combination of these. It should be noted, however, that Recommendation No.° 134 recommends that the right to medical care should not be subject to a qualifying period.

- 100.** In terms of the contingencies covered, Recommendation No.° 134 also calls for the award of allowances when absence from work is justified for other reasons, such as placement under medical supervision for rehabilitation or convalescence leave. Convention No.° 130, in its Article 22, is also more generous than Convention No.° 102, since the amount of the periodic payments must correspond, for a typical beneficiary ("a man with a wife and two children" (Article 1, (h)), to at least 60% of the reference salary instead of 45% under Convention No.° 102.

2.2.8 The Employment Promotion and Protection against Unemployment Convention, 1988 (° 168) and Recommendation (° 176)

- 101.** Convention No.° 102 focused on full unemployment. Convention No.° 168, on the other hand, provides that States shall endeavour to extend protection to loss of earnings resulting from partial unemployment and to the suspension or reduction of earnings due to temporary suspension of work, and shall provide for the compensation of part-time workers who are actually seeking full-time employment. States whose limited scope of the social security system justifies it may benefit from derogations allowing them, in particular, to defer the implementation of these measures. In addition, the Convention contains a series of provisions on new jobseekers, which require states to take into account the existence of many categories of jobseekers who have not been or have ceased to be recognised as unemployed, or who have never been or have ceased to be members of unemployment benefit schemes. The convention therefore prescribes the provision of social benefits to some of these categories⁹².

⁹² Social benefits must be granted to at least three of the ten categories identified by the convention, including young people who have completed their vocational training or studies; persons who have spent a period of time bringing up a child or caring for a sick, disabled or elderly person; and, under certain conditions, migrant workers on their return to their country of origin.

- 102.** The agreement^o 168 has a dual objective: to protect the unemployed by providing benefits in the form of periodic payments, and to promote employment. The minimum replacement rate for unemployment benefits should be 50% of the reference wage⁹³.

Recommendation No.^o 176 also contains detailed provisions concerning, inter alia, short-time working, the protection of workers who experience difficulties during the waiting period, new jobseekers, and part-time workers. Ratifying states must take appropriate measures to coordinate their unemployment protection systems and employment policies. The system of unemployment protection and, in particular, the arrangements for unemployment compensation should contribute to the promotion of full, productive and freely chosen employment and should not have the effect of discouraging employers from offering, and workers from seeking, productive employment. Part II of Convention No.^o 168 contains a series of provisions relating to the promotion of productive employment and refers in particular to the Human Resources Development Convention, 1975 (No.^o 142) and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No.^o 169)⁹⁴. Protected persons must comprise prescribed categories of employees totalling at least 85 per cent of all employees, including public servants and apprentices, or all residents whose resources during the contingency do not exceed prescribed limits⁹⁵. Recommendation No.^o 176 encourages states to gradually extend the application of unemployment compensation legislation to all employees. Once the conditions for entitlement have been met, Convention No.^o 168 provides that the initial duration of benefit payments may be limited to 26 weeks per case of unemployment or 39 weeks in any 24-month period. The Convention also allows States with temporary derogations to limit the duration of benefit payments to 13 weeks in any 12-month period. It should be noted that, in the event of prolongation of full unemployment beyond this initial period of benefit payment, Convention No.^o 168 provides for the payment of benefits during a subsequent period, the duration of which may be limited. In addition, the amount of these benefits may be calculated according to the resources of the beneficiary and his family. Finally, it should be noted that if a protected person receives severance pay from his or her employer or any other source, the agreement^o 168 allows for the suspension of unemployment benefits to which that person would have been entitled or for the reduction of the severance pay according to the total amount of unemployment benefits. Similarly, the convention allows for the refusal, withdrawal, suspension or reduction of benefits if the person concerned refuses to accept suitable employment. The convention lists a number of factors to be taken into account in assessing the suitability of a job, such as the age of the unemployed person, seniority in the previous occupation, experience gained, the duration of unemployment or the state of the labour market. Recommendation No.^o 176 specifies jobs to which the concept of suitable employment should not apply, such as a job involving a change of occupation that does not take into account the qualifications or work experience of the person concerned. The concept of suitable employment is not developed as such in Convention No.^o 102. However, the concept is included in the definition of contingency, so that benefits may be suspended in the event of a refusal to accept suitable employment.

2.2.9 Convention No.^o 183 and Recommendation No.^o 191

- 103.** Under Convention No.^o 183, the persons protected are to include all women employed, including women employed in atypical forms of dependent work. The convention prescribes a minimum period of entitlement to maternity benefits of 14 weeks (including a period of 6 weeks

⁹³ As a reminder, under Convention No.^o 102, benefits must take the form of periodic payments of up to 45% of the reference salary for a typical beneficiary (male with a wife and two children).

⁹⁴ M. HUMBLET and R. SILVA, *op. cit.*, p. 22.

⁹⁵ Whereas Convention No.^o 102 uses the words "whose resources during the contingency do not exceed".

of compulsory leave after the birth of a child). Women who are absent from work because of maternity leave are entitled to cash benefits, which, as a general rule, should not be less than two-thirds of their previous earnings. The medical benefits provided to protected persons must include prenatal care, care related to childbirth and postnatal care. Convention No.º 183 establishes the right to breastfeeding breaks and contains provisions on health protection, employment protection and non-discrimination.

2.2.10 comparative table of minimum replacement rates for cash benefits required by ILO social security conventions (source: ILO)⁹⁶

Social security branches	Convention No. 102		Conventions Nos. 121, 128, 130, 168, 183	
	Coverage	Benefit (%)	Coverage	Benefit (%)
Sickness benefit	At least 50% of all employees; or	45	All employees; or	60
	Economically active population constituting at least 20% of all residents; or		At least 75% of all economically active population; or	
	All residents with means below certain limit		All residents with means below certain limit.	
Unemployment benefit	50% of all employees; or	45	At least 85% of all employees; or	50
	All residents with means below certain limit		All residents with means below certain limit	
Old-age benefit	At least 50% of all employees or	40	All employees; or	45
	Economically active population constituting at least 20% of all residents, or		At least 75% of all economically active population	
	All residents with means below certain limit		All residents with means below certain limit	
Employment injury benefits	At least 50% of all employees		All employees	
	➤ Short term	50		60
	➤ Disability	50		60
	➤ Survivors'	45		50
Family benefit	At least 50% of all employees; or	3 ou 1,5	---	--
	20% of all residents; or			
	All residents with means below certain limit			
Maternity benefit	All women in prescribed classes, constituting not less than 50% of all employees; or	45	All employed women, including those in atypical forms of dependent work	2/3 of the woman's previous earnings
	All women in prescribed classes of the economically active population, constituting not less than 20% of all residents			
Invalidity benefit	At least 50% of all employees; or	40	All employees, or	50
	Economically active population constituting at least 20% of all residents; or		Economically active population, constituting at least 75% of the whole economically active population; or	
	All residents with means below certain limit		All residents with means below certain limit	
Survivors' benefit	Wives and children of not less than 50% of all employees; or	40	Wives and children of all employees or apprentices; or	45
	Wives and children of breadwinners in prescribed classes of the economically active population, constituting not less than 20% of all residents; or		Wives and children of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 75% of the whole economically active population; or	

⁹⁶ ILO, Setting Social Security Standards in a Global Society: An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization, 2008

2.2.11 Social security for migrant workers

104. Migrant workers face particular difficulties in the area of social security. In the absence of international protection, they risk losing the right to social security benefits they enjoyed in their home country, while at the same time they may face restrictive conditions for membership of the national social security system in the host country. Concerned from the outset about the situation of these particularly vulnerable workers, the ILO has sought to offer them protection, notably through its standard-setting action. The ILO was concerned with the social protection of migrants from the very beginning.

In general, ILO standards in this area have a twofold objective: to ensure equality of treatment with national workers in this essential area, and to prevent a change of residence from leading to the loss of acquired or pending rights⁹⁷. According to Frans Pennings, coordination under the ILO is still at a rudimentary level. This is because global conventions with extensive coordination rules run the risk of being ratified by only a few countries. Conventions that require high standards are more problematic for many states⁹⁸. Thus, the first conventions on the coordination of social security systems adopted by the ILO are, on the one hand, Convention No.° 19 concerning Equality of Treatment of Foreign and National Workers in Respect of Compensation for Occupational Injuries, under which each member of the ILO which ratifies this Convention undertakes to grant to the nationals of any other member which has ratified the said Convention who are victims of occupational injuries occurring in its territory, or to their dependants, the right to compensation for such injuries, the same treatment as it accords to its own nationals in respect of compensation for occupational injuries. This equality of treatment shall be assured to foreign workers and their dependants without any condition of residence (entry into force on 8 September 1926); and, on the other hand, Convention No.° 48 on the preservation of pension rights of migrants (1935). Convention No.° 48, as its name suggests, is limited to invalidity, old-age and survivors' pensions but has already had a decisive influence on the development of international or bilateral or regional arrangements⁹⁹. Considered too detailed and inflexible, this Convention is of limited importance and has therefore been ratified by only a few countries¹⁰⁰.

The International Labour Conference has adopted general instruments on migrant workers. In addition, general social security conventions explicitly or implicitly provide for the respect of the principle of equality of treatment between national and foreign workers. Finally, other ILO standards deal comprehensively with the issue of social security for migrant workers. The two main instruments in this area are the Equality of Treatment (Social Security) Convention, 1962 (° 118) and the Maintenance of Social Security Rights Convention, 1982 (° 157). Both contain provisions relating to all nine branches of social security. However, while a State ratifying Convention No.° 118 may limit its application to some of these branches, no such flexibility is offered by Convention No.° 157. Indeed, once a State party to the latter Convention has legislation covering a given branch, it is obliged to apply the provisions of the Convention to that branch. Both instruments provide for the possibility of States Parties to derogate from their

⁹⁷ J.-M. SERVAIS, *International Labour Standards*, pp. 249-250.

⁹⁸ Fr. PENNING, *European Social Security Law*, Antwerp, Intersentia, 2010, p. 275.

⁹⁹ M. RODRÍGUEZ-PIÑERO BRAVO-FERRER, "La O.I.T. y los trabajadores migrantes", in *Les normes internationales du travail: un patrimoine pour l'avenir - Mélanges en l'honneur de Nicolas Valticos*, edited by Jean-Claude JAVILLIER and Bernard GERNIGON, Geneva, ILO Office, 2004, p. 559.

¹⁰⁰ Fr. PENNING, *op. cit.* p. 275.

provisions by means of special arrangements concluded between them, provided that they do not affect the rights and obligations of the other States Parties and that they regulate the matters covered by them under conditions which, taken as a whole, are at least as favourable as those provided for by these two Conventions. Conventions No.⁹⁵ 118 and 157 thus establish a system based on a number of fundamental principles, foremost among which are equal treatment, the preservation of acquired rights and the preservation of rights in the course of acquisition¹⁰¹. Convention No.⁹ 118, which lays down the principle of equal treatment (subject to reciprocity¹⁰²) for non-nationals in terms of liability and entitlement to benefits for each of the nine branches of social security accepted by a state. Equal treatment must be ensured in principle without a residence requirement, i.e. this requirement should not be imposed only on foreigners. In addition, this convention provides for a direct obligation¹⁰³ to maintain acquired rights for long-term benefits (invalidity, old age, pensions for accidents at work or occupational diseases). In short, if the State is a party to Convention No.⁹ 118, it must ensure the provision of benefits abroad, in a given branch, both for its own nationals and for those of any other State that has accepted the obligations of the Convention for the same branch, regardless of the place of residence of the beneficiary¹⁰⁴. The 1982 Convention on the Preservation of Social Security Rights (No.⁹ 157) establishes a direct obligation to preserve acquired rights in respect of all branches for which the States concerned have legislation in force¹⁰⁵. However, only a limited number of ratifications have been made to this Convention. ⁹⁵In order to prevent a migrant worker from losing periods of employment, contributions or residence necessary for the entitlement to benefits (qualifying period) or for the calculation of the amount of benefit, Conventions No. 118 and 157 require states to endeavour to participate in a system of retention of acquired rights. The coordination instruments adopted within the ILO are incomplete instruments insofar as they do not incorporate all of the guiding principles of coordination, including that of determining the applicable legislation. Indeed, the ILO standards do not deal with problems of private international law (identification of the applicable law), with the exception, however, of Convention No.⁹ 157 which, in its Article 5, lays down the basic rules for determining the applicable law. Finally, both Convention No.⁹ 118 and Convention No.⁹ 157 call on the Member States to provide each other with the administrative assistance required to facilitate the application of the Convention and of their social security legislation.

2.2.12 Recommendation No.⁹ 202 on social protection floors

2.2.12.1 *The context: the ILO Declaration on Social Justice for a Fair Globalisation*

105. In 1944, the Declaration of Philadelphia recognised "the solemn obligation of the International Labour Organisation to assist in the implementation, among the nations of the world, of programmes designed to achieve", inter alia, "the extension of social security measures to provide a basic income to all those who need such protection and full medical care"¹⁰⁶. This

¹⁰¹ M. HUMBLET and R. SILVA, *op. cit.* pp. 43 et seq.

¹⁰² The principle applies only to nationals of another State which has also ratified Convention No.⁹ 118 (Article 3 of Convention No.⁹ 118), with the proviso that it applies to refugees and stateless persons without any condition of reciprocity (Article 10 of Convention No.⁹ 118).

¹⁰³ This obligation does not depend on an agreement between interested states.

¹⁰⁴ See Article 5 and the special rules on family benefits in Article 6.

¹⁰⁵ Since these States cannot, unlike in the case of Convention No.⁹ 118, exclude some of them (see Article 9 of Convention No.⁹ 157, which does, however, allow the provision of these benefits to be guaranteed in the framework of bi- or multilateral instruments).

¹⁰⁶ Constitution of the International Labour Organisation, Annex (Declaration of Philadelphia).

mandate was reaffirmed by the 2008 Declaration on Social Justice for a Fair Globalization¹⁰⁷¹⁰⁸ which calls for an integrated approach to the strategic objectives and thus a better integration of social security and social protection with other strategic objectives of the Decent Work Agenda: employment policy, social dialogue and fundamental principles and rights at work.

The fundamental role of the ILO in the field of social security was explicitly defined by the 2001 International Labour Conference in the context of a general discussion which concluded that "each country should define a national strategy to achieve the goal of social security for all"¹⁰⁹ and proposed that "a broad campaign be launched to promote the extension of social security coverage"¹¹⁰. In 2003, the Global Campaign on Social Security and Coverage for All was launched with the aim of extending social security to as many countries as possible and placing the issue on the international agenda.

As a follow-up to the Declaration on Social Justice for a Fair Globalization ("the Social Justice Declaration"), the Organization has set up a recurrent discussion mechanism¹¹¹ - which should not duplicate the ILO's supervisory mechanisms - by the International Labour Conference, which began in 2010 with a recurrent discussion on the strategic objective of employment¹¹². At its 304^e session, the ILO Governing Body decided that at the 100^e session of the ILC, the second recurring item would be the strategic objective of social protection, in particular social security¹¹³¹¹⁴.

¹⁰⁷ ILO Declaration on Social Justice for a Fair Globalization adopted by the ILC at its 97^e session in 2008; Declaration on Social Justice, Preamble and I, A, ii).

¹⁰⁸ ILO Declaration on Social Justice, preface by the Director-General, who states that "the 2008 Declaration is an expression of the contemporary vision of the ILO's mission in an era of globalization. The Declaration is an expression of the universal nature of the Decent Work Agenda: all members of the Organization must implement policies based on the strategic objectives of employment, social protection, social dialogue and rights at work" and that "at the same time, it emphasizes a holistic and integrated approach, recognizing that these objectives are indivisible, interdependent and mutually reinforcing, and ensures that international labour standards fulfil their role in achieving all of these objectives" (*ibid.*, p. 2)

¹⁰⁹ ILO, "Conclusions concerning social security", International Labour Conference, 89^e session, Geneva, 2001, § 16.

¹¹⁰ *Ibid.*, § 17.

¹¹¹ ILO Declaration on Social Justice, Annex, p. 18.

¹¹² The concept of a Social Protection Floor is enshrined in the Global Jobs Pact adopted by the Conference in June 2009. Countries that do not yet have a comprehensive social security system are called upon "to establish adequate universal social protection based on a Social Protection Floor", and the international community is urged "to provide development assistance, including budgetary support, to establish a Social Protection Floor at the national level".

¹¹³ ILO, Governing Body, 304^e Session, March 2009, Second item on the agenda of the 100^e ILC Session, GB.304/2/2, §§ 6 and 9.

¹¹⁴ The ILO has set the following objectives for the second recurrent discussion in the ILC (GB.304/2/2, p. 8):

- sharing information, experiences and lessons learned from various policies to manage change in social security, extend coverage and build universal, comprehensive and fiscally sustainable social security systems that simultaneously support economic and social development;
- the development and adoption of a comprehensive plan of action in support of the Organisation's mandate to promote good governance of social security systems and policies that are conducive to extending social security to all - inter alia - through social dialogue and at the same time conducive to full employment policies. This could be done by :
 - identify gaps in the ILO's capacity to act in the field of social security (i.e. research and knowledge sharing, advice, standards and rights activities, technical cooperation, promotion, etc.);
 - identify strategies for promoting a basic set of social security guarantees that would help countries to move progressively to higher levels of protection, in the spirit of the ILO's constitutional mandate and existing ILO social security instruments;
 - establish a strategic framework for the ILO's activities that :

106. With more than five billion people lacking access to an adequate level of social security, the new international standard adopted by the International Labour Conference calls for people to be provided with access to essential health benefits and care and basic income security, which are the national social protection floors. This basic social protection, such as essential health care and basic income security throughout life, thus reduces poverty, inequality, disease and premature death. "Social protection has proven to be a powerful tool against the crisis. It protects and empowers people. It helps to boost the economy and accelerate recovery. It is also one of the foundations for sustainable and inclusive economic growth," said Juan Somavia, Director General of the ILO¹¹⁵. This recommendation is a real step forward for social policy around the world. National social protection floors can be a major tool for achieving the Millennium Development Goals¹¹⁶.

107. ^eIn his opening address to the 101st Session of the ILC on 30 May 2012, the ILO Director-General described this recommendation as a "commitment to a decent society", a "platform that will enable hundreds of millions of women, men and children to move forward on a solid foundation". He also recalled the positive effects on the economy of such a foundation. In the European Union, he recalled that "unambiguous austerity measures taken to consolidate public finances lead to economic stagnation, job losses, reduced protection and considerable human costs, undermining those social values that Europe was the first to establish". The Director General stressed that "the only way to achieve fiscal consolidation is through austerity, which leads to economic stagnation, job losses, reduced protection and considerable human costs. It undermines the social values for which Europe was the standard bearer. The aim is to reduce the public debt - without succeeding in doing so - but the social debt is accumulating, and it too will have to be paid. The most affected European countries, under direct or indirect constraints, are increasingly turning away from the core values of the ILO, where the region was at the forefront"¹¹⁷.

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- is based on the principles of the Declaration of Philadelphia and the ILO Declaration on Social Justice for a Fair Globalization;
 - seeks to strengthen a coherent set of policies, strategies and tools;
 - describes technical assistance to constituents to effectively design and manage comprehensive national systems;
 - promotes the extension of social security to all people in need and supports economic and social development as part of the global campaign;
 - ensures the involvement and participation of protected persons in the design and implementation of social policies;
 - examine the need for additional policy tools that would help countries :
 - to achieve a basic set of social security guarantees in accordance with the ILO's constitutional mandate;
 - and, on this basis, to move progressively to higher levels of social security as provided for in Convention No.° 102 and other updated social security standards.

¹¹⁵ Press release 14 June 2021, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_183291/lang--fr/index.htm

¹¹⁶ Social Protection Floor: Towards a fair and inclusive globalization, Report of the Advisory Group chaired by M. BACHELT (set up by the ILO in collaboration with the WHO), Geneva, ILO.

¹¹⁷ www.ilo.org/public/french/bureau/dgo/speeches/somavia/2012/ilc30may12.pdf.

108. °The aim of Recommendation No. 202¹¹⁸ is to send a clear message from the international community that all human beings should enjoy at least basic social security guarantees and that Member States should provide protection to all those who still lack it as soon as possible, taking into account their own priorities and circumstances¹¹⁹.

2.2.12.2 Analysis of the instrument

109. From the outset, Recommendation No.° 202 reaffirms social security as a (fundamental) human right¹²⁰. The text of the instrument refers to Article 22 of the Universal Declaration of Human Rights, which states that "everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each country, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

110. A central element in the very design of Recommendation No.° 202 is its two-dimensional strategy¹²¹. The horizontal (extending income security and access to health care, even if only at a basic level, to the whole population) and vertical (moving vertically towards a comprehensive system of social protection)¹²² dimensions underlying any social security system are recognised as integral parts of any social security system. It is clearly stated that "the process of establishing comprehensive social security systems cannot stop at the protection floor"¹²³ and that "as national economies develop and become more resilient¹²⁴, people's income security and access to health care should be expanded". It is important to aim for expansion on both fronts, while adapting them to the national context. On the horizontal side, the aim is to extend a basic level of essential benefits to as many groups as possible and as quickly as possible, while on the vertical side, the aim is to increase the scope of coverage, i.e. to broaden the range and level of benefits to the level described in Convention No.° 102, or even to a higher level as defined in other (subsequent) ILO Conventions.

111. One of the objectives of Recommendation No. 202 is the (rapid) promotion of the ratification of the (Minimum) Convention No.° 102 on social security. Indeed, it should be noted that the mechanism as conceived by Recommendation No. 202 is an instrument that should eventually lead to the ratification of Convention No.° 102. To this end, the ILO will continue to accompany national decision-making processes towards the ratification of the Social Security (Minimum Standards) Convention, 1952 (No.° 102), and other social security Conventions which the

¹¹⁸ Recommendation on National Social Protection Floors (Recommendation on Social Protection Floors), 2012 (No.° 202); adopted with 453 votes in favour and one abstention.

¹¹⁹ Second item on the agenda, followed by the discussion on social security at the 100^e session of the International Labour Conference ILO, 312^e session of the Governing Body, GB.312/POL/2, *op. cit.*, § 6.

¹²⁰ J. FERRAND and H. PETIT, *Fondations et naissances des droits de l'homme, Actes du colloque international de Grenoble*, t. 1, Paris, L'Harmattan, October 2001. According to these authors, relaying the recommendations of René Cassin, "the right to social security is not only a human right, but above all a fundamental human right".

¹²¹ See ILO. ILO, *The International Labour Organization's strategy. Social security for all. Building social protection floors and comprehensive social security systems*, Geneva, 2012, pp. 3-9.

¹²² See in particular §§ 8 and 9 of the conclusions. This strand aims to provide a higher level of income security and access to high quality health care so as to preserve people's standard of living, even when faced with serious life contingencies, such as unemployment, illness, disability, loss of breadwinner or old age. This can be referred to as the 'vertical' component of the extension.

¹²³ See in particular § 11 of the conclusions.

¹²⁴ See in particular § 11 *in fine* of the conclusions.

Governing Body considers to be "up-to-date", and to this end will organize a broad-based training and awareness-raising campaign for national officials and experts from employers' and workers' organizations. The use of gender-neutral language should remove what is perceived as one of the obstacles to wider ratification of the relevant Conventions. The search for a pragmatic solution to this issue will begin in 2013 with the publication of an analysis paper in which the Office will propose different options. In order to assist member States in assessing and improving social protection arrangements¹²⁵, the ILO will produce in 2014 a guide to good practice in social security, including concrete advice and criteria. These criteria, based on national experiences and ILO standards on social security, will apply to both the horizontal and vertical dimensions of national strategies for the extension of social security, as well as to the set of core principles set out in the conclusions to ensure the implementation of these strategies. This will enable Member States to draw on the experience of other countries to assess their social security systems from a variety of perspectives - legislation, practice, effectiveness - and to check that the provisions are gender-sensitive and gender-neutral. The proposed criteria could cover the design and level of benefits; the impact of benefits on the labour market and economic development, poverty, inequality and human development; the potential role of social security systems in structuring the informal labour market; the operation, management and governance of social security schemes; the demand for and expenditure on benefits and their long-term financial, economic and fiscal impact. The guide will also provide advice on the development of bilateral and multilateral social security agreements.

- 112.** The need to formalise informal employment, and the need for effective and efficient social inspection services is also highlighted. Regulation - and hence the correct application of social security standards - implies the establishment and/or development of effective labour inspection systems with sufficient and adequate human and material resources. This point is made in several paragraphs of the conclusions.
- 113.** Another cardinal principle put forward by the recommendation is that the best income security is to be able to hold a decent job. The emphasis is on the fact that the "rehabilitation" of workers with reduced earnings (and generally for other vulnerable groups) should be done through a framework of personalised measures and real training at the expense of employers¹²⁶.
- 114.** The Recommendation stresses the essential role of tripartism and social dialogue, which is placed at the centre of any social protection policy, in all five axes of the conclusions (several paragraphs make explicit reference to this).
- 115.** As for social security, the recommendation states that it is an economic necessity. Social security is "essential to ensure that all share in the fruits of progress"¹²⁷. Its role as an automatic economic and social stabiliser in times of crisis is recognised by all, including international institutions such as the World Bank and the International Monetary Fund. Social security is an investment in people and enables economic growth: the "virtuous circle" highlighted in the ILO report which leads to a logical chain of policies relating to social protection and employment. It is clear that without investment in at least basic social protection, countries cannot fully exploit the productive potential of their labour force and thus cannot realise their full growth potential. This investment provides a foundation for effective employment policies that can lead to

¹²⁵ Conclusions, § 35, I).

¹²⁶ § 20, indent 12, of the Conclusions.

¹²⁷ § 5(c) of the Conclusions.

accelerated formalisation of the workforce, and thus to higher levels of sustainable and equitable growth - a precondition for financing higher levels of welfare for society.

- 116.** The Recommendation urges Member States to "develop quality public services to support effective social security systems"¹²⁸ and to "adopt policies to ensure that all workers, including those in atypical employment, can benefit from social security"¹²⁹.
- 117.** Recommendation 202 aims to facilitate the reconciliation of work and family responsibilities for women and men and to ensure effective access to comprehensive social services to meet care needs, including for children, older people and people living with HIV or AIDS¹³⁰, or who are disabled¹³¹.
- 118.** With regard to the end of careers, measures to promote the employment of older workers envisaged are investment in technology, health and safety measures at work, the elimination of age discrimination and the introduction of innovative working arrangements in the event of restructuring¹³².
- 119.** The setting of the retirement age should be based on social dialogue and tripartism and take into account working conditions and the number of years worked. Moreover, retirement is recognised as a legitimate stage in the life cycle¹³³.

2.2.12.3 In summary, what does Recommendation No.º 202 propose

- 120.** In summary, Recommendation No.º 202:
- Calls on countries to put in place their social protection floors as soon as possible as part of their national development process;
 - indicates that social security should therefore support the growth of formal employment as well as the reduction of informality;
 - sends a strong message to the international community to extend social protection systems despite the current economic crisis. This means allowing as many people as possible to have access to higher levels of social security guaranteed by national laws as soon as conditions in each state allow.
- 121.** Each country is encouraged to establish social protection floors "as a fundamental element of their national social security systems" and as part of their social, economic and environmental development plans. Countries that cannot afford to provide a social protection floor may seek international cooperation and support to complement their own efforts.

¹²⁸ § 20, indent 3, of the conclusions.

¹²⁹ § (e. a.) 6 of the conclusions.

¹³⁰ It is well known that quality social services can also play an important role, for example, for people living with AIDS, some of whom have experienced reductions or even loss of income: the ILO Recommendation No.º 200 on HIV and AIDS clearly supports this.

¹³¹ § 20, indent 8, first part of the sentence.

¹³² § 21, 1^{er} and 2^e indent of the conclusions.

¹³³ § 21, 3^e indent of the conclusions.

The new ILO Recommendation is the first autonomous recommendation on social security to be passed since 1944. The vote comes 24 years after the last discussion of a legal instrument on social protection by government, worker and employer delegates in 1988. In November 2011, the G20 leaders meeting in Cannes recognised "the importance of investing in nationally developed social protection floors".

2.2.12.4 Ten years after the adoption of Recommendation No. 202...the ILO celebrated its centenary and the covid-19 health crisis came along!

122. In 2019, at its 108th Session, the International Labour Conference adopted a landmark text, the ILO Centenary Declaration for the Future of Work (the Centenary Declaration), which renews the founding mandate of the International Labour Organization (ILO) and gives it renewed impetus to build a future of decent work for all. Reaffirming the principle set out a hundred years ago, the Centenary Declaration recognizes that a universal and lasting peace can only be founded on the basis of social justice and that this can only be achieved by improving working conditions and workers' rights worldwide, including the right to social security. In a context of profound changes brought about by globalization, technological innovation, demographic changes and health and climate crises, social protection continues to be an integral part of the ILO's mandate and to play a key role in promoting decent work, social justice and sustainable development. Although the extension of social protection has made significant progress in many parts of the world, the human right to social security is still not a reality for the majority of the world's inhabitants, as the COVID-19 pandemic has brutally revealed. Only 45 per cent of the world's population actually receives at least one social protection benefit, while the remaining 55 per cent - nearly 4 billion people - have no protection at all¹³⁴.

123. There is no shortage of convincing arguments in favour of social protection. It is both an inherent human right and a highly successful social and economic investment. It makes an important contribution to reducing poverty, insecurity and inequality, and is a factor in political stability and social cohesion. It also contributes to economic dynamism by improving productivity, enhancing people's ability to take advantage of changes in the world of work, and supporting aggregate demand, particularly in times of economic downturn. Social protection delivers results: income security and access to health care make a real difference to the lives of those who benefit from it. This is why it has been recognised as having the potential to contribute to the achievement of the goals of the 2030 Agenda for Sustainable Development (2030 Agenda), especially in the context of the Covid-19 pandemic.

124. The conclusions adopted at the 105th Session (2016) of the Conference on the impact evaluation of the ILO Declaration on Social Justice for a Fair Globalization confirmed the need for further recurrent discussions. At its 328th¹³⁵ and 331st¹³⁶ Sessions, the Governing Body decided

¹³⁴ ILO, World Social Protection Report 2017-2019: Universal social protection to achieve the Sustainable Development Goals, 2017.

¹³⁵ GB.328/INS/5/2 and decision.

¹³⁶ GB.331/INS/3.

on the conduct of the next round of recurrent discussions, with a view to including one on social protection (social security) on the agenda of the 109th Session (2021) of the Conference.

- 125.** The ILO report to the International Conference (2021)¹³⁷ contains proposals for future priorities for the Office to help member States build robust social protection systems, including social protection floors, adapt them to the context of the future of work and better prepare for future crises and shocks.

3 Conclusions

126. All too often, a certain literature assimilates the body of standards produced by the ILO as soft law or, in any case, as standards of no importance, having no impact on the domestic law of the Member States. This view must be firmly opposed, given that the conventions adopted by the ILO (despite their unique feature in international law of being negotiated by the social partners and governments on an equal footing), once ratified by the Member States, oblige them to comply with them and, where appropriate, to adopt their domestic law accordingly (e.g. Convention No. 189 on domestic workers obliged Belgium to amend its social security legislation, in particular to treat them in the same way as other workers from the point of view of social security). The so-called fundamental conventions (to which certain conventions on health and safety at work have been added) oblige the Member States to respect their principles, even if they have not ratified them simply because the principles underlying these normative texts are reflected in the ILO Constitution, which members must respect when they join the Organisation.

127. But the influence of the standards produced by the ILO has another virtue. ILO standards very often serve as "beacons" for national governments when they are called upon to develop new policies and constitute invaluable benchmarks, for example, when a government intends to introduce changes to its social security system: ILO standards remind governments of the principles that cannot be neglected without running real risks for their social security system.

128.

129. Social security is a human right which responds to the universal need for protection against certain life risks and social needs. Effective social security systems guarantee income security and health protection, thereby contributing to the prevention and reduction of poverty and inequality, and the promotion of social inclusion and human dignity. They do so through the provision of benefits, in cash or in kind, intended to ensure access to medical care and health services, as well as income security throughout the life cycle, particularly in the event of illness, unemployment, employment injury, maternity, family responsibilities, invalidity, loss of the family breadwinner, as well as during retirement and old age. Social security systems therefore constitute an important investment in the well-being of workers and the community as a whole, and facilitate access to education and vocational training, nutrition and essential goods and services. In relation with other policies, social security contributes to improving productivity and employability, and to economic development. For employers and enterprises, social security helps to maintain a stable workforce that can adapt to changes. Finally, it reinforces social cohesion and therefore contributes to building

¹³⁷ ILO, ILC 109/Report V, Building the future of social protection for a people-centred world of work, TOC 109 th Session, 2021.

social peace, inclusive societies and a fair globalization by ensuring decent living conditions for all. The Conventions and Recommendations which make up the ILO's standards framework on social security are unique: they set out minimum standards of protection to guide the development of benefit schemes and national social security systems, based on good practices from all regions of the world. They are therefore based on the principle that there is no single model for social security, and that it is for each country to develop the required protection. For this purpose, they offer a range of options and flexibility clauses for the progressive achievement of the objective of the universal coverage of the population and of social risks through adequate benefit levels. They also set out guidance on the design, financing, implementation, governance and evaluation of social security schemes and systems, in accordance with a rights-based approach. In a globalizing world, in which individuals are exposed to ever greater economic risks, it is clear that a significant national policy of social protection can contribute to attenuating the many negative effects of crises

130. A final aspect worth highlighting is the influence of the law produced by the ILO on European law. Thus, for example, the European Council recommendation of 8 November 2019 on access to social protection for workers and the self-employed¹³⁸ is in some ways an extension of ILO recommendation 202 on social protection floors. Other examples could be cited, whether in the field of social security or labour law.

131. The ILO is not just a respectable old lady, but it remains highly relevant in our societies faced with perpetual change, crises of all kinds and even the resurgence of war in Europe.

¹³⁸ Official Journal of the European Union of 15.11.2019 C 387/1. This recommendation states that "In its Social Protection Floors Recommendation of 2012 (No 202), the International Labour Organization recommends its members, in accordance with national circumstances, to establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees".

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