

International Standards on Social Security

Lessons from the past for a better implementation

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Although a sophisticated body of international social security law is active and growing, many States appear unable to honour it. This calls for well-researched surveys and analysis of existing international social security law in search of informed consideration of the barriers to the law's full effectiveness. This paper focuses on the analysis of the International Labour Organization (ILO) Conventions and Recommendations on Social Security. Even in the absence of ratification and therefore of legal force, they are invaluable benchmarks in comparative law. Indeed, ILO standards are both useful instruments of analysis and excellent yardsticks for identifying common denominators among national systems.

The document considers the past, the present and the future of social security systems. It briefly examines the historical development of social security (I). It draws common principles of present international social security law (II). It finally analyses the most recent public debates on social protection and the adoption in 2012 of the ILO Recommendation No. 202 concerning national floors of social protection - the importance of which was stressed at the 2012 summit of the G20 - opening some perspectives for the future work of the Organization and other global institutions (III).

I. The Past: Origin and the Development of the Social Security Law

Let us successively examine the origin of social security law, the new vision adopted after Second World War two and the need for further changes.

A. The Origin of the Social Security Law

Churches and charities have taken steps, during the Middle Age, to alleviate the condition of life of the poorest. Public authorities too have progressively considered poverty no more as a purely moral problem, but as a social question; some European countries, like England in 1601, began to adopt 'Poor Laws'.² Legislation and bureaucratic regulation had another

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² R. Castel, *Les métamorphoses de la question sociale: une chronique du salariat*, Paris, Paris, 1st ed. Fayard, 1995; Gallimard (Folio Essais), 1999; S. Deakin & F. Wilkinson, *The Law of Labour Market: Industrialization, Employment and Legal Conditions* (Oxford U. Press 2005).

objective: to fix a vagrant, and then dangerous, population that was flying the misery of rural areas. The measures adopted at that time included what could be called today social assistance in the form of such essential services as adequate food and lodging.

It will not be surprising to underline that the problematic of the extension of the social security to the destitute is still closely linked to anti-poverty policies. Furthermore, the existing institutions are still founded on a territorial basis. The observed increase of international labour mobility calls now for a better coordination of the national systems. This has been done by bilateral treaties, or within the European Union, in particular with Regulations (EC) No. 883/2004 and No. 987/2009 of the European Parliament and of the Council of 29 April 2004 of 16 September 2009, as amended.

Friendly societies were formed later with the rise of the industrial revolution where the employees helped each other by putting voluntarily contributions in common. The move to wage labour and to the guarantees afforded through the contract of employment has progressively established a system of social protection which is still today the basis for the material security of most people. From 1891 onwards, they received in Belgium some subsidies from the State. Otto von Bismarck made Germany, in the 1880s, the first Nation to adopt a statutory social insurance system, establishing the notion of benefits as a right and making it applicable to the industrial workforce as a whole. Other European countries, like France or Belgium, slowly followed an equivalent model at the end of the nineteenth or at the start of the twentieth century.

Similar schemes were introduced in Latin America (Argentina, Brazil, Chile and Uruguay). Insurance models were widened; new risks such as unemployment benefits were included; and the groups of persons covered were enlarged. Although the insurance model prevailed, tax-financed programmes were also introduced at an early stage. In the Nordic countries, not only the workers but also all the inhabitants were protected. Later, the Great Depression of 1929–1933 and the post-crisis recovery policies gave impetus to the new social security programmes. The 1930s witnessed a further expansion of social security schemes, mainly in Europe and the Americas.³ Legislation was also adopted by New Zealand in 1938.

Social Security did not really arrive in the USA until 1935. Federal legislation has never received the same importance as in the European Nations. Enterprises collective agreements still play a major role, especially for pensions and health insurance. The very concept of ‘social security’ however was formalized in 1934 when the United States Congress passed the Social Security Act pioneered by President Roosevelt. The President believed that ‘these three great objectives – the security of the home, the security of livelihood, and the security of social insurance – ... constitute a right which belongs to every individual and every family willing to work’, stated during his message to Congress reviewing the broad objectives and accomplishments of the administration, 8 June 1934.⁴

3. P.-Y. Greber, *Droit international et européen de la sécurité sociale: ONU, OIT et Conseil de l'Europe*, paras. 63 et seq.; R. Castel, *supra*; G. Perrin., ‘Origines du droit international de la Sécurité sociale’, *Revue Française des affaires sociales*, January–March 1981, 161–205; ‘Histoire du droit international de la sécurité sociale’, *La sécurité sociale. Son histoire à travers les textes*, A. Barjot (ed.), Association pour l’étude de l’Histoire de la sécurité sociale, Paris, vol. V, 1993; http://www.cleiss.fr/docs/regimes/regime_belgique; ILC, *supra*. www.securite-sociale.fr > Histoire.

4. <http://www.ssa.gov/history>; ILC, *Social security and the rule of law*. General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations (Arts 19, 22 and 35 of the Constitution), Report III (Part 1B) 100th Session, 2011, ILO, Geneva, 2011, 10, n. 21.

B. The 1939–1945 War and the New Age of Social Security

The Second World War and the post-war years witnessed significant developments at the national, regional and international levels, with the confirmation of social security as a human right. A number of countries made their State-owned social insurances, as ruinous periods of inflation during economic crisis of 1929–1933, and the 1939–1945 conflict had impeded the private companies to pay adequate benefits. The Beveridge Report was published in the United Kingdom in 1942⁵ and was implemented from 1945 onwards. It had a considerable impact on future progresses. In recognition of the responsibility and obligation of society as a whole towards those who had defended it against aggression, the aim was to extend the right to social security from the insured workers to the entire Nation.

Lord Beveridge's landmark 1942 Report, prepared at the behest of the British Government, marked a turning point. The ILO had assisted the British as the Organization did for the Roosevelt New Deal before.⁶ Those developments culminated in the social security system promoted by ILO and since adopted by many countries, with the State itself assuming responsibility, at least as a substitute for the employer, the scope of benefits being broadened and the different branches of social security being incorporated into one unified and coordinated system.

The first ILO instruments to reflect this shift were two recommendations adopted in 1944. Recommendation No. 67 calls for income security schemes that relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work (including old age) or to obtain remunerative work or by reason of the death of a breadwinner. It considers that income security should be organized as far as possible on the basis of compulsory social insurance, whereby insured persons fulfilling prescribed qualifying conditions are entitled to benefits in consideration of the contributions they have paid to an insurance institution. Provision for needs not covered by compulsory social insurance should be made by social assistance; certain categories of persons (such as dependent children and needy invalids, aged persons and widows) should be entitled to reasonable allowances; social assistance appropriate to the needs of the case should be provided for other persons who want.⁷

The Recommendation lists the various contingencies that should be covered by compulsory social insurance. Social insurance should afford protection to employed and self-employed persons, together with their dependants; its administration should be unified or coordinated within a general system of social security services; contributors should, through their organizations, be represented on the bodies 'which determine or advise upon administrative policy and propose legislation or frame work regulations'.⁸ An annex contains suggestions for the application of these guiding principles.

The second Recommendation, No. 69, concerns medical care, which it suggests should fully cover all members of the community. It should be provided either through a social

5. *Sir William Beveridge: Social insurance and allied services*, presented to Parliament by command of His Majesty, Nov. 1942 (H.M. Stationery Off., U.K., 1969).

6. B. Kahl-Wolff & P.Y. Greber, *Sécurité sociale. Aspects de droit national, international et européen* (Bâle, Helbing & Lichtenhahn, 2006), paras. 291–300 and 305; N. Valticos, *Droit international du travail*. (Daloz, Paris, 2nd edition, 1983), para. 518 and footnote; G. López Morales, R. Silva & A. Egorov, *Social security in Intl. Lab. Org., International Labour Standards: A Global Approach*, 452 (Intl. Lab. Org. 2001); M. Humblet & R. Silva, *Standards for the XXIst Century: Social security 1–2* (Intl. Lab. Org. 2002).

7. Paragraphs 1–4.

8. Paragraphs 5–27.

insurance medical care service with supplementary provision by way of social assistance, or through a public medical care service.⁹

Mention should also be made of Recommendation No. 102, 1956 and Recommendation No. 115, 1961 dealing with social services for workers and housing.

The Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes, as its title suggests, a general system whose scope is (gradually) extended to all sectors of activity and to the entire population including the self-employed and non-working population. It comprises the nine main kinds of benefits that become due at the appearance of specific contingencies: medical care and sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivors' benefits. The Convention introduces the principle of a minimum general level compatible with human dignity that the States must attain in the light of their socio-economic development. On 11 November 2014, Convention No. 102 had been ratified by 50 countries, including thirty-two in Europe, ten in Latin America, six in Africa and two in Asia. Another convention on the protection of maternity and several recommendations were voted during the immediate post-war period.¹⁰

The instruments drawn up since are based on Convention No. 102, but provide broader protection in terms of the persons covered and the amount of the benefits. They cover specific areas of social security or problems inherent in international transfers of labour.¹¹

A number of European countries have completed the social protection benefits by a guaranteed minimum income, often coupled with measures for the reintegration into the labour market and calculated in such a way as to provide the beneficiary with partial and transitional wage replacement and, at the same time, to avoid creating disincentives either to work or to employment creation.¹² This system is a part of social security.¹³

In Europe, the social security schemes have become progressively part of the essential elements of citizen's life by constituting the major guarantee against the loss of income. An equivalent role is still played in other regions by traditional sources of economic security such as house or other assets as well as family responsibility. It is part of a social policy that satisfies the citizens' desire in Europe to see the State establish rules, institutions and practices safeguarding them from social risks. It is based on a recognized duty of solidarity and, more

9. Paragraphs 8, 19 and 5.

10. Not counting the maritime instruments, they are: the Income Security Recommendation, 1944 (No. 67), the Social Security (Armed Forces) Recommendation, 1944 (No. 68), the Medical Care Recommendation, 1944 (No. 69), the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation (No. 95).

11. The Equality of Treatment (Social Security) Convention (No. 118) of 1962, the Employment Injury Benefits Convention (No. 121) and Recommendation (No. 121) of 1964, the Invalidity, Old-age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131) of 1967, the Medical Care and Sickness Benefits Convention (No. 130) and Recommendation (No. 134) of 1969, the Maintenance of Social Security Rights Convention, 1982 (No. 157) of 1982, the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and Recommendation (No. 176) of 1988. They have received fewer ratifications: on 28 Jan. 2013, Convention No. 118 has been ratified by thirty-eight Member States; Convention No. 121 by twenty-four Member States; Convention No. 128 by sixteen Member States; Convention No. 130 by fifteen Member States; Convention No. 157 by four Member States; Convention No. 168 by eight Member States and Convention No. 183 by 26 Member States.

12. P. Housitzky, K. Julienne & M. Lelièvre, 'Un panorama des minima sociaux en Europe', *Problèmes économiques*, 24 Dec. 2008, 21–27; La documentation française, Du RMI au RSA: une refonte des politiques d'insertion et d'aide sociale, <http://www.ladocumentationfrancaise.fr/dossiers/rmi-rsa-insertion-aide-sociale/index.shtml?xtor=EPR-528>.

13. See the judgment of the European Court of Justice in the Case *Vera Hoecks*, No. 249/83, 27 Mar. 1985, Rec. 973.

often than not, on the explicit or tacit agreement of the large employers' and workers' federations.

The European vision of an extended social security system has been criticized in various circles as weakening competitiveness and therefore making the 'old' continent unable to adjust to a globalized economy. It continues however to influence the ILO approach. The last part of this paper deals with the public debates on how to maintain and extend the protection in the new socio-economic and political context. In developing countries, progresses have been most uneven. Some 75%–80% of the global population still lives in a state of 'social insecurity'.¹⁴

C. Social Security Standards in the near future

The globalization process highlights the need for economic change to be accompanied by labour and social protection regulations, the fruit if possible of ILO cooperation with international economic, financial and trade institutions. It is no easy matter to devise those regulations. Tension subsists between economic imperatives and social concern, between countries of differing levels of economic development.¹⁵ Unemployment, underemployment and precarious employment spare almost no country. Living conditions are still all too often inhuman.¹⁶ I will just sum up here the main developments at the international level.

In the early 2000, the ILO renewed its commitment to the extension of social security coverage and to the improvement of the governance, financing and administration of the schemes and launched a 'Global Campaign on Social Security and Coverage for All'.¹⁷ The Office has developed a two-dimensional strategy. The 'horizontal' dimension comprises the extension of income security and access to health care, starting at a modest level, to the whole population. It echoes the idea of the transfer component of the Social Protection Floor (SPF), developed by the United Nations Chief Executives Board for Coordination (UN CEB), which promotes a set of basic transfers or entitlements enabling persons to access essential goods and services. The SPF extends the initiative to such other essential services as drinkable water, adequate food, sanitation, health, education and lodging. The second, 'vertical' dimension has sought to provide higher levels of income security and health protection in line with economic and social development, when people were faced with fundamental life contingencies such as unemployment, ill health, disability, maternity, loss of breadwinner and old-age.

The ILO, together with the World Health Organization (WHO), has been given a leading role in the SPF. The collaboration with other agencies aims at building a coalition of international agencies and donors supporting countries to plan and implement sustainable social protection schemes. The SPF approach was incorporated into the Global Jobs Pact,

14. Intl. Lab. Conf., *Social security for social justice and a fair globalization*, *supra*, at 7–8.

15. P. Kettunen & K. Petersen, *Beyond Welfare State Models. Transnational Historical Perspectives on Social Policy* (Edward Elgar 2011).

16. See Intl. Lab. Conf., *Decent Work*, Report of the Director-General to the 87th Session (1999) of the International Labour Conference (Geneva), ILO, 1999; Intl. Lab. Conf., *Working out of Poverty*, Report of the Director-General to the 89th Session (2001) of the International Labour Conference (Geneva), ILO, 2001, as well as the Declaration on Social Justice for a Fair Globalization, adopted by the ILC on 10 June 2008.

17. ILO, Resolution and conclusions concerning social security, International Labour Conference, 89th Session, Geneva, 2001, paras. 16–19; ILO: Report of the Director-General: Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage, Governing Body, 306th Session, Geneva, Nov. 2009, GB.306/17/2.

adopted by the ILC in 2009. It was endorsed by the 2010 United Nations Summit on the Millennium Development Goals which stressed that ‘social protection systems addressing and reducing inequality and social exclusion are essential for protecting the gains towards the achievement of the Millennium Development Goals’.¹⁸ A ‘Social Protection Floor Advisory Group’ has been created to provide general guidance with regard to the feasibility, applicability and adaptability of the concept and its implementation process in different socio-economic and institutional contexts and to promote cooperation between countries.¹⁹ At the Los Cobos summit held on 18–19 June 2012, the G.20 Leaders also insisted on the importance of SPFs.

Recent ILO research has emphasized the pivotal role of social security in achieving a fair globalization, facilitating economic development and structural change, and managing crises; the setting of international labour standards helps the Organization achieve this mandate. An ILO-World Bank Report and on-line data tool shows that, despite the crisis, social protection systems expanded in many parts of the world between 2008 and 2010.²⁰

In 2012, the ILC has adopted a new Recommendation No. 202 concerning national floors of social protection. It promotes national policies aiming at implementing such policies. With a view to giving the necessary flexibility in the choice of the methods and policies for achieving the intended social protection outcomes, schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax schemes, public employment schemes and employment support schemes.²¹

The International Social Security Association (ISSA) also considers that social security often comes at no additional cost to society but is integral to its smooth and successful functioning. It reduces poverty and inequality and contributes to social cohesion, while also representing an investment in human capital, unlocking the productive capacities of individuals and advancing economic development.²²

II. The Present: common Principles

All recent ILO instruments on social security share the same vision and have therefore in common a number of principles.²³ They implement the human right to social security contained in the various UN treaties. They are based on solidarity and compulsory affiliation; their coverage is universal and their provision sufficiently flexible to apply to a large variety of countries; they are financed by payments calculated on the basis of salary or by taxes and are managed by institutions that are administratively, financial and legally autonomous. The Beneficiaries’ Right follows the same pattern.

18. U.N., *Keeping the promise: United to achieve the Millennium Development Goals*, General Assembly Resolution A/65/L.1, adopted on 22 Sept. 2010 (New York, 2010), para. 51.

19. See the ILO site on the Social Protection Floor Initiative.

20. Intl. Lab. Org., World Bank, *Inventory of Policy Responses to the Financial and Economic Crisis 27* (World Bank, Intl. Lab. Org. 2012).

21. Paragraph 9(3).

22. Intl. Soc. Sec. Assn., *Coping with the Crisis: Managing Social Security in Uncertain Times* (2012).

23. Some of the so-called principles mentioned in para. 3 of Recommendation No. 202 are rather sound and prudential guidelines of management.

A. Social security as a human right

It has often been underlined that social security pertains to that minimum protective threshold below which human beings could not live and work with dignity.²⁴ The International Covenant on Economic, Social and Cultural Rights not only formally recognize the right to social security as a human right, but also refer to the protection and assistance to the family and to the right of everyone to an adequate standard of living, “including adequate food, clothing and housing, and to the continuous improvement of living conditions”.²⁵ The right is enshrined as such in other international²⁶ and regional legal instruments.²⁷ Each State Party undertakes to implement these rights progressively, upon ratification, i.e., to take steps towards the full realization of the relevant rights ‘to the maximum of its available resources’, while ensuring immediate protection against discrimination.²⁸ The ILO Recommendation No. 202 concerning national floors of social protection, 2012, also reaffirms that the right to social security is a human right and an economic and social necessity for development and progress.

The impact of the ILO conventions and that of Convention No. 102 in particular, should therefore not only be measured in terms of the number of ratifications: over the years, Convention No. 102 has had, and continues to have, substantial influence on the development of social security in the various regions of the world. The ILO technical cooperation activities in the field of social security are based on its principles. Many States, like China, Latvia or Lebanon, take its provisions into account when drafting their own legislation, even if they have not yet ratified. The social security systems of nearly all European countries and many Latin American and Caribbean countries follow the pattern set out in Convention No. 102 and in the higher social security standards. The influence of these standards has also been felt in Japan and in the Republic of Korea as well as in Tunisia and Morocco. Furthermore, the Convention has influenced the development of formal social security systems in low-income countries: more than thirty African countries have set up pensions schemes modelled on it. Although these countries’ formal social security systems cover only a small portion of the population, Convention No. 102 constitutes a development goal and is a reference used in documents setting long-term objectives with regard to the levels of protection and social security needed to be attained.²⁹

Article 67 of Convention No. 102 states that the benefits should ‘be sufficient to maintain the family of the beneficiary in health and decency’. Articles 65(10) and 66(8) adds that the rates of current periodical payments in respect of old-age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following

24. J. van Langendonck, *Verfassung, Theorie und Praxis des Sozialstaats, Festschrift für Hans F. Zacher zum 70. Geburtstag* (F. Ruland, B.von Maydell, Papier ed., C. F. Müller Verlag, Heidelberg, 1998), 477–488; J.M. Thouvenin and A. Trebilcock (eds.), *Droit international social*, vol. 2, Brussels, Bruylant, 2013, pp. 1664-1680.

²⁵ Articles 9 to 11 of the Covenant.

²⁶ In particular, in several United Nations instruments: the Convention on the Elimination of All Forms of Discrimination against Women, 1979, Arts 11(1)(e), 11(2)(b) and 14(2)); the Convention on the Rights of the Child, 1989, Arts 26, 27(1), 27(2) and 27(4); the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Art. 5(e)(iv); the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 1990, Arts 27 and 54; the Convention on the Rights of Persons with Disabilities, 2006, Arts 25 and 28 in particular.

²⁷ Such as the European Social Charter, adopted by the Council of Europe in 1961 and its Revised version of 1996.

²⁸ Article 2 of the Covenant.

²⁹ Such as the Southern African Development Community (SADC) Code of Social Security, or a number of national social security policy documents, for example in the United Republic of Tanzania and Zambia. See Intl. Lab. Conf., *Social security for social justice and a fair globalization*, *supra*. at paras. 40–41.

substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

According to paragraph 8 of Recommendation No. 202, basic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice, and may take into account regional differences. The levels of basic social security guarantees should be regularly reviewed through a transparent procedure that is established by national laws and regulations. Representative organizations of employers and workers and, as appropriate, representatives of other organizations and persons concerned should be involved in the establishment and review of the levels of these guarantees.

B. Obligation of Solidarity

Social security systems are one of the most powerful institutional expressions of social solidarity. We have already mentioned that friendly societies were formed at the rise of the industrial revolution where the employees helped each other by putting voluntarily contributions in common. Some categories of solidarity still exist in other parts of the world. Spontaneous community forms of mutual aid are usually based, in Africa for example, on family ties, religious or ethnic adherence, or ancestral activities, such as managing common land, shared work or crisis resolution. More structured solidarities can be observed in the different regions. They have a personal or territorial basis, like tontines, or an occupational one, like cooperatives or mutual benefit associations. They cover field from health care to the micro-insurance.³⁰ They might be further studied as alternative means of insuring social protection when more sophisticated social security cannot be reached in near future.

International labour standards in this field aim to strengthen social cohesion by promoting this solidarity between active and non-active members of society, between rich and poor and between present and future generations. The old-age pension constitutes an excellent example. Formal social security pensions are deeply rooted in long-standing values of inter-generational solidarity; they rapidly became an important part of inter-generational arrangements and were considered a necessary supplement to informal arrangements.³¹ The ILO conventions and recommendations base social security systems on such organizational principles as risk pooling and collective financing by the members of the community through contributions or taxes, and guaranteeing a minimum level of protection sufficient to maintain the family of the beneficiary in health and decency. They also reduce the risk of social and political upheavals and allow a more stable development of democratic institutions and the rule of law.³²

The solidarity principle can difficultly be realized within a large community if affiliation is not obligatory. At the system level, the political commitment of high coverage, adequate benefits and sustainable financing can only be reached through dialogue and consensus. How to reach such a balance is a major component in the debates on the reforms needed to adjust social security systems to demographic changes. At each individual level however, the

30. Intl. Lab. Org., *Standards-related Activities and Decent Work: Prospects in the Field of Social Security* 5 (Intl. Lab. Org. Mar. 2005). Proposals made by the independent experts, social security policy and development branch.

31. Intl. Lab. Conf., *Social Security for Social Justice and a Fair Globalization*, *supra*, at para. 231.

32. Intl. Lab. Conf., *Social Security and the Rule of Law*, *supra*, at paras. 34, 109, 162, 164 and 443.

challenges remain, and there is an ongoing need to enforce in the daily practice the compulsory nature of the contributions.

C. Flexibility Towards Universality

Recommendation No. 202 underlines³³ the principle of universality of protection, based on social solidarity. The progressive incorporation of different categories into the social security schemes, even in countries where they evolve towards universal coverage, is not an easy task. That is why Convention No. 102 puts forward targets to meet rather than describing the applicable techniques. It is worded flexibly enough to be adapted to the different systems used by the Member States and to the development process. In addition, the minimum rate of benefit is based on the level of wages in the country concerned.

The ILO conventions provide a range of ratification options for countries whose economic development does not allow for full implementation of the instruments considered; such countries do not need to wait until general coverage has been extended to all branches of activity and all categories of persons, and can offer limited levels of benefits. The conventions on social security contain several flexibility clauses.³⁴

Several conventions have distinct parts, only some of which must be accepted on ratification. Such is the case of Convention No. 102: the ratifying State must accept at least three of its nine parts (corresponding to the nine branches of social security), including at least one of the following five: unemployment, old-age, employment injury, invalidity and survivors. It can subsequently notify ILO that it has accepted one or several other parts. Likewise, Convention No. 118, 1962, on equality of treatment (social security) allows Members to accept the obligations it sets forth in respect of only one of the nine branches of social security. Convention No. 128, 1967, on invalidity, old-age and survivors' benefits, allows the States to apply only one of those three branches; Convention No. 168, 1988, on employment promotion and protection against unemployment, allows them to exclude the provisions on new applicants for employment from the obligations accepted on ratification.

Derogations are authorized to the field of application and the scope of benefits for countries whose economy and medical facilities are insufficiently developed. Those countries can cover a more limited number of protected persons if they make a declaration to that effect on ratification. In such cases, Convention No. 102 allows the States to determine the number of protected persons with sole reference to the workers employed in industrial undertakings of a certain size; it also authorizes the Member State to afford benefits that are not as great or for a limited time. These are temporary derogations and the country that avails itself of them must regularly indicate whether the reasons for doing so remain valid or whether it ceases to avail itself of them. Other, similar temporary derogations are to be found in Conventions Nos. 121, 128, 130 and 168.

Convention No. 102 and the conventions adopted later allow other exceptions in terms of beneficiaries:

33. Paragraph 3

34. See also M. Humblet & R. Silva, *Standards for the XXIst Century: Social Security* 7–15 (Intl. Lab. Org. 2002).

- (a) Convention No. 102 does not apply to seamen or sea fishermen,³⁵ and the State does not itself have to exclude them. Convention No. 128, which we have already mentioned, and Conventions Nos. 121, 1964, on employment injury benefits, and No. 130, 1969, on medical care and sickness benefits, permit the exclusion of seafarers, including sea fishermen, if those categories are protected by special schemes which provide benefits that are at least equivalent.
- (b) All three Conventions Nos. 128, 121 and 130, authorize the exclusion of public servants under the same conditions. Convention No. 168 states that public employees whose employment up to normal retiring age is guaranteed by national laws or regulations may be excluded from protection.
- (c) Conventions Nos. 121, 128 and 130 also authorize the exclusion of members of the employer's family living under the same roof, if they work for him, and of casual workers.³⁶ Convention No. 121 also provides an exemption for home workers and Conventions Nos. 128 and 130 for wage earners in the agricultural sector.
- (d) All three Conventions authorize the exclusion of other categories of workers whose number should not exceed 10% of all wage earners, and Convention No. 183 of 2000 on maternity protection of 'limited categories of workers' when its application to them 'would raise special problems of a substantial nature'.³⁷

D. Financing: Contributory and Non-contributory Systems

Social security systems should be financed in such a manner as to ensure their long-term financial sustainability. No comprehensive scheme can be maintained without a stable revenue basis. Expenditure on health and pension predominates everywhere. According to Recommendation No. 202, national SPFs should be financed, in principle, by national resources; however, members whose economic and fiscal capacities are insufficient to implement the entire set of guarantees may seek transitional international assistance. States should consider using different methods to mobilize the necessary resources to ensure financial, fiscal and economic sustainability of national SPFs, taking into account the contributory capacities of different population groups. Such methods may include, individually or in combination, effective enforcement of tax and contribution obligations, reprioritizing expenditure, or a broader and sufficiently progressive revenue base.³⁸

The main choice for the financing of public programmes remains how far they should be organized as contributory social insurance and how far as non-contributory institutions

35. With regard to seafarers, see the Seafarers' Pension Convention, 1946 (No. 71) and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165).

36. The formula used by Art. 4 of Convention No. 121 ('persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employers' trade or business') differs from the one of Conventions No. 128 (Art. 37) and No. 130 (Art. 5): 'persons whose employment is of a casual nature'.

37. Article 2, para. 2.

38. Paragraphs 11 and 12.

accessible to all residents or all residents in a specified category (such as to be active). The success of the various approaches largely depends on labour market structure, the proportion of formal wage and salary employment in total employment, and the extent of the informal economy. However, the size of social security investment depends also on the prevailing political and social will. In many cases, this is the result of different, often historically influenced societal preferences.³⁹

Convention No. 102, in the same way as the later instruments, accepts varying methods for the provision of protection through the mechanisms of social insurance, social assistance or universal public service, so as to leave more options to Member States. It merely requires that the States take account of the economic situation of the country and of the beneficiaries. Conventions Nos. 121, 128 and 130 contain no further indications. Convention No. 168 specifies⁴⁰ that the system chosen may be contributory or non-contributory or a combination of the two. Each country may apply the Convention through a combination of contributory and non-contributory benefits, general and occupational schemes, compulsory and voluntary insurance, through different methods for the administration of benefits, and public and private participation. The Convention No. 102 only sets out a series of objectives based on commonly accepted principles establishing a minimum social threshold for all Member States.⁴¹

The instrument⁴² establishes a general framework for the financing of benefits: the cost of the benefits and of their administration is to be borne collectively by way of insurance contributions or taxation. It also specifies how the burden is to be shared: in a manner which avoids hardship to persons of small means; in contributory schemes, the total of the insurance contributions borne by the employees protected must not exceed 50% of the total of the financial resources allocated to the protection. In all other respects, the Member States are free to adopt the system they want.

E. Organization and Administration: Public or Private Management?

The ILO drafted Convention No. 102 and most of the subsequent conventions in such a way as to allow the States great leeway in organizing the systems by which benefits are provided. Article 72 of Convention No. 102, for example, provides that the system may be regulated by the public authorities, by a government department or by any other body, under prescribed conditions. Those instruments nevertheless set forth basic rules that must be respected no matter what system is used.⁴³ The CEACR recalled this in its consideration of the compatibility of a private pension scheme with Convention No. 102. It considered that the co-existence in a social security system of both a private and a public scheme was not incompatible with the Convention, which ‘allows the minimum level of social security to be attained through various means’.⁴⁴ That flexibility must nevertheless be accompanied by the adoption of clear rules on organization and administration. The principles of good

39. Intl. Lab. Conf., *Social Security for Social Justice and a Fair Globalization*, *supra*, at paras. 102, 107, 110–111 and 375; Hiessl, Ch., « Employer-Centred Benefits and Atypical Workforce », *IJCLLIR*, vol. 30 (1), march 2014, pp. 67-85.

40. Article 12.

41. Intl. Lab. Conf., *Social Security and the Rule of Law*, *supra*, at paras. 58 and 67.

42. Article 71.

43. G. López Morales, R. Silva & A. Egorov, *supra*, at 472–473.

44. Intl. Lab. Conf. (86th Session, 1998): *Report of the Committee of Experts for the Application of Conventions and Recommendations*, Report III (Part 1A), 279–283 (Intl. Lab. Org. 1998).

management concern in particular the State's ultimate responsibility, the participation of the insured and the financing of benefits.⁴⁵

Both Convention No. 102 and the subsequent instruments state that the State bears general responsibility for the proper administration of social security systems.⁴⁶ That responsibility extends to the benefits service. Convention No. 102 adds that the State must ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.⁴⁷ The CEACR has stated, in respect of old-age benefits, that the State's recognized power of oversight or control should not lead it to draw in any way on the funds constituted for purpose of paying such benefits⁴⁸ with a view to making up a budget deficit. Likewise, Convention No. 168 stipulates that in cases where subsidies are granted by the State or the social security system in order to safeguard employment, steps must be taken to ensure that the subsidies are expended only for the intended purpose and to prevent fraud or abuse by the beneficiaries.⁴⁹

Mention should be made of the specific case of Convention No. 183 on maternity protection. Like the earlier standards, Article 6 states that the benefits due in respect of maternity or sick leave are to be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice; however, the employer is not individually liable for the direct cost of such benefits to a woman employed by him. The aim is to protect the situation of women workers in the labour market, to ensure, in respect of a long-standing concern, that maternity protection does not add to the employer's burden or make him prefer to hire men workers. There are three exceptions: if the employer expressly agrees to bear those costs; if the national law or practice of a Member State provided thus prior to the date of adoption of the Convention; if the government and the representative organizations of employers and workers subsequently so agree.

If there is one area in which public institutions⁵⁰ and private bodies have long collaborated, it is in the area of social security. The distribution of functions between State and employer, workers, their respective organizations, as well as other interested groups, is a traditional issue, as is the role of the private sector with profit-making objectives (as for example for complementary pensions) and the professions.⁵¹ Where administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, the ILO instruments state that representatives of the beneficiaries must participate in the management, or be associated therewith in a consultative capacity; national laws or

45. M. Humblet & R. Silva, *supra*, at 11–14.

46. Articles 72 of Convention No. 102, 24–25 of Convention No. 121, 35 of Convention No. 128, 30 of Convention No. 130 and 28 of Convention No. 168. It is not the case of the Maternity Protection Convention, 2000 (No. 183). See also para. 3 of Recommendation No. 202.

47. Article 72.

48. Intl. Lab. Conf. (76th Session, 1989), *Social Security Protection in Old Age Report III (Part 4B)*, para. 210 (Intl. Lab. Org. 1989).

49. Article 30.

50. They include, in Germany, social insurances managed jointly by trade unions and employers associations.

51. See Intl. Lab. Conf. (76th Session 1989), *General Survey of the Reports Relating to the Social Security (Minimum Standards) Convention (no. 102) 1952 Report III (Part 4 B)*, §§ 47–49 (Intl. Lab. Org. 1989). See also A. Nußberger, *Sozialstandards im Völkerrecht*, Duncker u. Humblot, Berlin, 2005, 331 (Case of Chile) and 333 (Case of Peru); M. Voirin, *L'organisation administrative de la sécurité sociale. Un enjeu social et politique* (ILO, Geneva, 1991), 1.

regulations may likewise decide as to the participation of representatives of employers and of the public authorities.⁵²

The huge sums collected as fees and distributed as benefits, and the impact of such benefits on the daily lives of its beneficiaries explain the ongoing debates on the autonomy of management afforded to social security bodies, on the participation of representatives of the employers' and workers' organizations in their management, and on the total or partial privatization of social security schemes.⁵³ Those controversies have, in many cases, exposed the serious deficiencies in the organization and working of the public services concerned, especially in developing countries.⁵⁴ The ability of the social security administration to ensure, for example, compliance with legislation is often unsatisfactory. This comment particularly applies to the payment of contributions. These are not collected in their totality, and social security institutions do not always take the action necessary to see that they are, though such an initiative would take time and money, particularly where a small or micro-enterprise is concerned.

The administrative efficiency of such institutions varies enormously.⁵⁵ Administrative costs as a percentage of benefit expenditure in the social insurance systems of industrialized countries are extremely low. In developing countries, they tend to be very much higher. Why? To cite just a few of the reasons: small schemes cannot benefit from the same economy scale as larger ones; the socio-economic environment in developing countries makes it administratively more difficult to comply with the legislation, and computerization, allowing cost-reduction, is far less advanced in these countries than in, say, Western Europe.

With a view to finding a global solution to such problems, countries like Chile in 1981 have undertaken the privatization of their national pension scheme. Evidence however showed soon that benefits were more than limited. Pension funds might have suffered enormous losses during financial crisis, as in 2008. The operational costs of the private sector pension fund in this country were extremely high, and a considerable proportion consisted of marketing and sales costs.⁵⁶ In addition, the private fund appears to be rather ineffective in ensuring compliance with the legislation: the percentage of their regular-paying contributors was low. Since unpaid contributions did not confer any benefit entitlements, the problem was not too serious for the pension funds but created serious problems for the State which had to pay minimum guaranteed benefits to retirees. Eventually, Chilean Pension Reform Act, enacted in January 2008, created a system of basic pensions.⁵⁷

52. Articles 72 of Convention No. 102, 24 of Convention No. 121, 36 of Convention No. 128, 29 of Convention No. 168. Art. 31 of Convention No. 130 requires the participation of employers 'where appropriate'.

53. See also Org. Econ. Cooperation & Dev., *Private Pensions and Public Policy* (1992).

54. See in particular Intl. Lab. Org. Governing Body, 254th Session (Nov. 1992): Social protection and safety nets, document GB.254/CE/1/4, paras. 12. 38 and ff.; Intl. Lab. Org., *World Labour Report* 61 (1993); C. Gillion, *La interacción entre el ajuste estructural y la seguridad social*, XXIVth General Assembly of the IISA (Acapulco), 1992, 10–11.

55. Intl. Lab. Org. Governing Body: *supra*, at paras. 43 and ff.

56. C. Gillion & A. Bonilla: *Analysis of a National Private Pension Scheme: The Case of Chile*, 131 Intl. Lab. Rev. 171–195 (1992) and the comments of R. Bustos Castillo: *Ibid.*, 407–416.

57. P.A. Ortiz, *Labour Market, Industrial Relations and Human Resources Management. From Recession to Recovery* 218–238 (R. Blanpain, W. Bromwich, O. Rymkevich, I. Senatoro eds., Kluwer 2012); *Reforming Pensions. Principles and Policy Choices* 227–238 (N. Barr & P. Diamond ed., Oxford U. Press 2008); M. Délano: *Reforma previsional en Chile, protección social para todos* (Santiago, ILO, 2010); ILO, *La Reforma previsional en Chile y la contribución de la OIT* (Santiago, 2008); Intl. Lab. Org. Governing Body, *supra*, at para. 44; Intl. Lab. Conf., *Social Security for Social Justice and a Fair Globalization*, *supra*, at paras. 134 and 151.

An in-depth reform of social security institutions would seem to be an alternative which implies less radical change and could lead to rapid positive results. This should include two sets of measures, the first aiming at improving the efficiency of the system, the second at eliminating fraud and abuse. The principal remedies are well-known: ensuring availability of all necessary data concerning the insured persons, regular indexing of contributions and benefits; rational and appropriate methods of collecting fees and providing assistance; improving the quality of services offered to insured persons; and administrative decentralization. Recommendation No. 67 of 1944 concerning income security insists on the proper coordination of the social security system.⁵⁸ There are various ways to avoid the squandering of funds, the confusion of public budgets, the misuse and other shortcomings associated with the management of social funds. The most efficient may be to involve representatives of interested parties, employers and insured persons, in the management and control of the institutions concerned, as provided *inter alia* by Convention No. 102.

F. Entitlements

1. Method for Calculating Cash Benefits

The conventions make allowances for differences in social security approaches by providing three formulas for evaluating the extent to which the benefits granted under national laws and regulations attain the rates required.⁵⁹ They so cover systems based on social insurances (first formula), on guarantee of a minimum living wage (second formula) or social assistance (third formula).⁶⁰ The formulas, from which the States can choose, are based on the methods of calculation most often used in practice:

- Under the first, the minimum amount of the benefits must correspond, for a standard beneficiary, at a given percentage of the previous earnings of the beneficiary or breadwinner. The percentage must be attained if the previous earnings of the beneficiary or breadwinner are equal to or lower than the wage of a skilled manual male employee; a maximum limit may be prescribed for the rate of benefit or for the earnings taken into account.⁶¹
- Under the second, the rate of benefits, for a standard beneficiary, must attain a specified minimum amount in relation to the wage of the ordinary adult male labourer.⁶²
- The third formula consists in setting the rate of benefit using a prescribed scale that may depend on the other resources of the beneficiary's family. In this case, the rate must not be less than that calculated using the previous formula. This method can only be used for systems covering all residents.

No matter what the formula chosen, the rate of benefit must therefore attain, for a 'standard beneficiary', a certain percentage of the reference wage or earnings. The standard beneficiary is defined differently for each contingency and serves only as a reference for comparing the rate of benefit provided in national laws and regulations and the provisions of the

58. Paragraph 27.

59. Convention No. 102 uses these formulas for all social security branches with the exception of family benefits. Conventions Nos. 168 and 183 provide for other rules.

60. P.Y. Greber, *supra*, at paras. 520–522.

61. On the concept, see Art. 65 of Convention No. 102.

62. On the concept, see Art. 66 of Convention No. 102.

conventions. The States remain free to adopt their own rules for calculating the rate of benefit, subject to the sole condition that it be at least equal to the rate established by the instruments.

A number of legislations, like in Germany, deal with the share of the old-age, invalidity and survivors' benefits in case of divorce. Others consider however that those women today are fully integrated to the labour market and have a direct entitlement to a pension, and not a right dependent on a breadwinner husband.

2. *Suspension, Refusal, Withdrawal of Benefits*

Convention No. 102 and the subsequent conventions⁶³ recognize three instances in which benefits may be suspended: (a) if the beneficiary is absent from the country in which the rights were acquired; (b) if he is maintained at public expense, or at the expense of a social security institution or service, or if he receives another social security cash benefit; (c) if the beneficiary's personal conduct is open to doubt: for example, if he makes a fraudulent claim, if the contingency arose from a crime, offence or wilful misconduct, if he neglected to call on the appropriate services (medical care, placement, guidance and training services).

Conventions Nos. 102, 121 and 128 further provide for the suspension of survivors' benefits as long as the surviving spouse is living with another person as spouse. Conventions Nos. 121, 128 and 130 stipulate that part of the cash benefit otherwise due is to be paid to the dependants of the person concerned.

Under the terms of Convention No. 168 on employment promotion and protection against unemployment, benefits may be refused, withdrawn or suspended not only in the above three cases (e.g., if the person concerned deliberately contributed to his or her own dismissal or left employment voluntarily without just cause), but also 'during the period of a labour dispute, when the person concerned has stopped work to take part in a labour dispute or when he or she is prevented from working as a direct result of a stoppage of work due to this labour dispute'.⁶⁴

3. *The Beneficiaries' Right of Appeal*

The principle of the right of appeal is set down in Convention No. 102 and in the subsequent instruments.⁶⁵ Conventions Nos. 102, 121 and 130 restrict the right of appeal when it comes to medical care if the administration of medical care is entrusted to a government department responsible to a legislature; in that case, the right of appeal may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority. The preparatory work for Conventions Nos. 121 and 128 contain additional indications on the nature of the appeal: it does not suffice to allow the person concerned to ask the administrative authority that took the decision to reconsider the matter; an independent authority must render a decision.⁶⁶

63. Articles 69 of Convention No. 102, 22 of Convention No. 121 and 32 of Convention No. 128; Arts 28 of Convention No. 130 and 20 of Convention No. 168.

64. Article 20(d). Such an exception is not contained in Convention No. 102 (Art. 69) which leads to a long story of observations of the CEACR in the case of Germany: see Intl. Lab. Conf., *Reports of the Committee of Experts*, 49th Session (Intl. Lab. Org. 1965) and 85th. Session (Intl. Lab. Org. 1997); see also N. Wagner, *Internationaler Schutz sozialer Rechte*, 250–253 (Nomos Verlagsgesellschaft, Baden-Baden 2002). Germany had been requested to amend its legislation and cancel such a provision.

65. Articles 70 of Convention No. 102, 23 of Convention No. 121, 34 of Convention No. 128, 29 of Convention No. 130 and 27 of Convention No. 168, para. 7 of Recommendation No 202.

66. Intl. Lab. Conf. (48th Session, 1964), *Report V(2)* 60 (Intl. Lab. Org. 1964); *ibid.* (50th Session, 1966), *Report V(I)* 68 (Intl. Lab. Org. 1966). Compare with Art. 70(3) of Convention No. 102 and Art. 23(3) of Convention No. 121.

According to Convention No. 168, the claimants must be informed in writing of the procedures available, which must be simple and rapid. Both Conventions Nos. 168 and 128 stipulate that the claimant must be able to be represented or assisted by a qualified person of his choice or by a delegate of a representative workers' organization.

III. The Future: Extending to the Poorest

The following pages focus first on experiences and reflections in search for new solutions. A second section underlines the need to put social security in a broader context. A last section considers the policy orientation of the ILO aiming at extending social security coverage while ensuring sustainability.

A. The Search for New Solutions

The problematic developed with regard to precarious workers also applies for the poorest. Their activities remain relatively impervious to the influence of national or international legal rules. It is so in a way by definition in the case of what are known as informal economies.

The informal sector in middle- and low-income countries is not however a monolithic whole. It comprises traditional activities performed within the family circle, usually agricultural work in the broad sense. It also comprises undeclared odd jobs and small, one-man operations run by carpenters, mechanics, repairmen of all kinds, etc. It includes small businesses that are known to the authorities and registered by them but that find it relatively difficult to apply all administrative, tax or social legislation. Small businesses that have at least partially integrated the formal sector find themselves in an intermediate situation in terms of standards on social protection in particular, better able to apply some – which must be identified – than others.

While a number of standards cover all workers and sometimes even contain provisions that refer expressly to the informal sector, the exceptions and flexibility clauses of the ILO conventions address all the more to the informal economy workers, whether he lives down town or on the country side. Many conventions apply only to wage earners, whereas the poorest is also, if not mainly, to be found among the self-employed. Even when applicable, compliance with such provisions is especially difficult to impose and verify, be it in international or national law. No matter what the scope of the texts establishing the field of application, the persons concerned could fall through the cracks, as we already pointed out, of the social security systems promoted by Convention No. 102 and more recent ILO instruments.

The paradox is therefore obvious. Their shaky position renders poor workers more vulnerable than others, and thus in need of a clear and protective legislation that is often missing. The weak, more than the strong, need to be able to bank on the certainty of written texts.⁶⁷ Lacordaire, writing in more general terms, said that when it came to the rich and the poor, the weak and the strong, it was freedom that oppressed and the law that freed. We are back at the origins of social law. The arguments advanced in favour of the application of

67. J.-J. Dupeyroux: 'Et maintenant?', *Droit social*, special issue (July–August 1981), 487.

national and international labour and social security law to these special categories of workers are therefore very solid. The workers are thus ensured, at least on paper, of protection on a par with that of other workers; equality of treatment is respected; there are no second-class citizens.

In those circumstances, Recommendations No. 67 and No. 69 keep continuous relevance as they may serve as a basis for the standard-setting dimension of anti-poverty policies. This has been confirmed in the recent general survey carried out by the CEACR on social security instruments.⁶⁸ Some countries address this coverage gap by progressively moving towards universal social security regimes giving priority to achieving general access to health care and establishing all-covering pension schemes. Other countries have adopted broad schemes targeting workers and families with low revenues who live outside of formal employment and have no other access to social security benefits. Some States emphasize the need to strengthen administration of social security and coordination of the different schemes – measures which play an important role in the formalization of workers and improving their access to social benefits. It is worthy to observe that extension of coverage does not necessarily need to go through a legislative process. A potent method of extending coverage is the use of collective agreements, as Argentina did.

In parallel, a number of instruments deal with the people's well-being and development and to the promotion of the desire on their part for social progress. Recommendation No. 102 of 1956 discusses the facilities to be granted to wage earners of public and private undertakings⁶⁹ in terms of meals, rest (seats and rest rooms), recreation and transportation. Recommendation No. 115 of 1961 applies to the housing of 'manual and non-manual workers, including those who are self-employed and aged, retired or physically handicapped persons'. It defines the objectives of a national housing policy and the responsibility of the public authorities in that regard. It deals successively with the questions of housing provided by employers, the financing of housing programmes, housing standards, measures to promote efficiency in the building industry, the link between house building and employment stabilization, and town, country and regional planning. It contains suggestions on the methods of applying the principles it establishes.

Other ILO instruments deal with the protection of wages and the fixing of minimum wages. The main texts in this respect are Convention No. 95, adopted in 1949 and supplemented by Recommendation No. 85, Convention No. 131 and Recommendation No. 135 of 1970 on minimum wage fixing.

Mention should be made of the anti-poverty policies carried out by some countries. Thus the Indian Parliament has adopted the National Rural Employment Guarantee Act, No. 42 of 2005. It aims at paying 100 employment days per year to any adult rural household whose member(s) would accept to do some manual unskilled work and applies already in 200 districts from all States of the country. The Unorganized Workers' Social Security Act, No. 33 of 2008 provides health benefits, life and disability insurance, old-age pension and a work injury scheme for workers in the informal economy, including agricultural workers and migrant labourers. In India also, the Self-Employed Women Association (SEWA) has established a pension fund supplied by fees paid by its members who are women rural

68. Intl. Lab. Conf., *Social Security and the Rule of Law*, *supra*, at paras. 50–53 and 313–317.

69. Excluding workers in agriculture and sea transport.

informal workers; other successful experiences exist in Brazil,⁷⁰ India again, Iran and Tanzania.⁷¹

The Brazilian government has launched in 2003 a new programme called *Bolsa Familia*. It gives financial support to poor families who observe some development requirements, including in terms of schooling, vaccination, food control and ante- and post-natal tests. The initiative covers some 11.3 millions families, i.e., 46 million persons. It could be improved because too many beneficiaries still are not really poor. It has nevertheless permitted a significant reduction in the number of citizens living below the poverty line.⁷² A rural pension scheme (Prêvidencia Rural) is also operating in Brazil, under the Social Security Act, with the aim of reducing poverty and vulnerability among older men and women engaged in rural employment and excluded from social insurance schemes. It provides a non-contributory old-age pension, as well as survivors', disability, maternity, sickness and employment injury benefits, all largely financed by general taxation.⁷³

The new basic pension scheme for rural workers introduced in 2009 by the Government of China is subsidized by the central and local governments. Anyone above the age of 16 who does not take part in the existing urban pension scheme is eligible to pay into the programme; the regime will cover farmers above the age of 60. The pension amount varies regionally and is based on the average local income. Pilot versions are on trial in the different provinces; it was expected to embrace 10% of the provinces by the end of 2009, and expand to cover the whole country by 2020.

B. Social Security in a Broader Context

The promotion of employment lies at the heart of ILO development and anti-poverty programmes. For the Organization, poverty cannot be eliminated 'unless the economy generates opportunities for investment, entrepreneurship, job creation and sustainable livelihoods. The principal route out of poverty is work.'⁷⁴ The strategy to eliminate poverty proposed by the ILO Director-General has a number of components, all related in one way or another to both employment and international labour standards: developing skills for sustainable livelihoods; investing in jobs and the community (through labour-intensive programmes); promoting entrepreneurship; making money work (using microfinance); building local development through cooperatives; overcoming discrimination and working to end child labour; ensuring incomes and basic social security; working safely (by taking adequate steps to prevent occupational accidents and illnesses).

Microfinance in particular is a means to help the wretched. It does so while trying to maintain the profitability of the system. The ILO and other international institutions have underlined the potentialities of the mechanism⁷⁵ and pointed out particular successes like the one of the Grameen Bank in Bangladesh.⁷⁶

70. S. Rocha, *Pobreza no Brasil. A final, de que se trata?*, Rio de Janeiro, Editora FGV, 2003.

71. Intl. Soc. Sec. Assn., *supra*; T. Akson, *Extension de la couverture du système de sécurité sociale en Tanzanie. Les leçons de l'Inde et de l'Iran*, Bull. droit comparé travail sécurité sociale 65–81 (2008).

72. Intl. Lab. Org., *Bolsa Familia in Brazil: Context, Concept and Impacts* Soc. Security Dept. (Mar. 2009).

73. Intl. Lab. Conf., *supra*, at para. 315.

74. J. Somavia, *Working Out of Poverty*, Report of the Director-General to the 91st Session of the Intl. Lab. Conf. (2003) 7 et seq. (Intl. Lab. Org. 2003).

75. *Microfinance and Public Policy: Outreach, Performance and Efficiency* (B. Balkenhol ed., Intl. Lab. Org. 2007); Intl. Lab. Org., *Microfinance for Employment Creation and Enterprise Development* (2002); Intl. Lab.

The successful experiences provide for a dual system. They include guarantees in case of specific contingencies, such as sickness, accident, old-age and death. They also contain anti-poverty measures such as free or subsidized food supply and accommodation, medical assistance, prevention campaign and public employment programmes. Furthermore, there seems today to be a consensus among experts on the need to integrate social protection within the anti-poverty and economic development strategies. They consider possible the establishment at medium term a ‘basic social security package’, including in low-income countries.⁷⁷ Discussion highlighted the problems brought about by the aging of the population (in terms of the costs of health care and pension schemes) and of the HIV/AIDS pandemic (also in terms of financing the system).⁷⁸

The question is being discussed at the ILO.⁷⁹ A first step may be the elaboration of a priority package consisting of access to basic and essential health care, income security for children (facilitating access to nutrition, education and care), some social help to poor and unemployed persons, and income security through basic pensions for old and disabled persons. The Organization has reaffirmed the importance of Recommendations No. 67 and No. 69 for the development of a modern system of social security they establish with the principle of a comprehensive coverage of the whole population by a scheme associating measures of social insurance, social assistance and public services. They offers a broader legal and institutional framework than the one proposed by Convention No. 102.

Difficulties of the social security systems in developing countries have already been underlined. They relate to the size of the informal economy, to the limited income of the State and maybe still more to the weakness of the management provoked by numerous factors. Some are connected with the confusion between the State and the social security budgets, with corruption and more often than not with the bureaucracy and wasting. Some regards the incapacity of the State to collect all dues and to invest them in a safe and profitable way. Some others are linked to the incapacity to adjust the benefits to the inflation rate, to obtain the same economies of scale than industrialized countries and to use a performing data processing system. Reference is also made to clientelism and to the absence of a ‘work culture’, as a consequence of a bad application of social policies.

C. Social Security in the ILO Decent Work Agenda

Org., *Micro-finance in Industrialized Countries. Helping the Unemployed to Start a Business* (2002); *Social Economy: Building Inclusive Economies* (A. Noya et E. Clarence ed., Org. Econ. Cooperation Dev. 2007); *Protecting the Poor: A Micro insurance Compendium* (C. Churchill ed., Intl. Lab. Org. & Munich Re Found. 2006); L. Mayoux, *Microfinance and the Empowerment of Women. A Review of the Key Issues* (Intl. Lab. Org. 2000).

76. See www.grameen-info.org/.

77. Intl. Lab. Org., *Social Security: a New Consensus* 1–30 (2002); U.N., *World Economic and Social Survey 2007. Development in an Ageing World* (New York, 2007); Intl. Soc. Sec. Assn., *Dynamic Social Security for Africa: An Agenda for Development* (2008); E. Kalula et E. Levy, ‘Accès aux soins de santé et aux systèmes de santé en Afrique du Sud’, *Bull. droit comparé travail sécurité sociale* (2008), 161–185.

78. Intl. Lab. Org., document GB.303/ESP/3, Nov, 2008, Geneva, §12 et seq.; E. Fourie, *The Modernization of Labour Law and Industrial Relations in a Comparative Perspective* (Bull. Comp. Lab. Rel., No. 70), 271–293 (R. Blanpain, W. Bromwich, O. Rymkevich, S. Spattini eds., Alphen aan den Rijn, Kluwer 2009); M. Olivier, *Extension of Labour Law and Social Security Protection to the Informal Sector: Developing Countries Perspectives with Specific Reference to Southern Africa*, *Ibid.*, 241–293.

79. See Intl. Lab. Org., documents GB.303/ESP/3, November 2008, Geneva, §43 and 14 and GB 304/LILS/5, Geneva, Mar. 2009, §9.

In its Report to the 87th Session of the ILC,⁸⁰ the Director-General stressed that the primary goal of the ILO today is to promote opportunities for women and men to obtain decent work, in conditions of freedom, equity, security and human dignity. ‘This is the main purpose of the Organization today. Decent work is the converging focus of all its four objectives: promotion of rights at work; employment; social protection; and social dialogue. It must guide its policies and define its international role in the near future.’ The concept of decent work, as used by the ILO, seeks to group under one umbrella all the elements of harmonious economic and social development, of which protective labour rules are an essential component. Social protection in this context covers both working condition and social security. The Office has been reorganized around those four objectives⁸¹ that are synthesized in the ILO terminology by the terms ‘the Decent Work Agenda’.

In 2001, the ILC held a general discussion with the objective of determining the ILO’s vision of social security in the twenty-first century.⁸² In 2003, the Organization launched a ‘Global Campaign on Social Security and Coverage for All’, which put in practice the global consensus of governments, employers’ and workers’ organizations to broaden social security coverage, particularly in the informal economy, and raise awareness of its constructive role in economic and social development.

In support of its action, the ILO developed a two-dimensional strategy in moving towards comprehensive social security coverage. The horizontal dimension aims at extending essential social security guarantees to as many people and as fast as possible. No matter what the multiplicity and severity of sources of insecurity are and the ability to tackle them, social security should ensure that two fundamental needs are met for all, namely: basic income and access to health care. The strategy helps Member States to establish the SPF, developed together with the United Nations. As already mentioned,⁸³ the SPF promotes a set of basic transfers or entitlements enabling persons to access essential goods and services and extends the initiative to such other essential services as drinkable water, adequate food, sanitation, health, education and lodging.

The vertical dimension of the ILO extension strategy seeks the provision of a wider range of benefits covering additional social risks and categories of persons, and the increase of benefit rates to at least the level prescribed by Convention No. 102 and other up to date social security Conventions.⁸⁴ The Organization considers that the main and interlinked priorities for social security in any national context are to cover all in need, to provide benefits adequate in both social and economic terms and, to secure sustainable financing.⁸⁵

Comprehensive social security is limited largely to industrialized countries. The great majority of the world population lacks access to such coverage. Some level of protection by social security exists however in most countries. Coverage is often limited to a few branches, and only a minority of people has access to them, both legally and in practice as effective implementation is significantly lower than the level provided by the statutory provisions. All countries provide some social health protection, thus enabling access to at least a limited

80. J. Somavia, *Decent Work*, Report of the Director-General to the 87th Session of the ILC 1–4 (Intl. Lab. Org. 1999).

81. For further details, see J. Somavia, *Reducing the Decent Work Deficit: A Global Challenge*, Report of the Director-General to the 89th Session of the ILC 2–4 (Intl. Lab. Org. 2001).

82. Intl. Lab. Org., *Social Security: A New Consensus* (Intl. Lab. Org. 2001).

83. Part I, ch. 2, §5.

84. See Intl. Lab. Conf., *Social Security and the Rule of Law*, *supra*, at para. 20; Intl. Lab. Conf., *Social Security for Social Justice and a Fair Globalization*, *supra*, at paras. 7–9, 264, 296, 383–384.

85. Intl. Lab. Conf., *Social Security for Social Justice and a Fair Globalization*, *supra*, at paras. 80, 81, 86, 88, 144 and 146.

range of health care services that include some free public services and other benefits through health insurance for certain categories at least. Most States possess schemes providing contributory old-age pensions, although in many the scope is restricted to workers in the formal economy, mainly in the civil service and large enterprises, or even to part of it. Those not benefiting from institutional pension have to rely on the support of their families and communities.

The large variation in expenditure levels across countries illustrates the role that policy initiatives have played to extend social security to the poorest. A new generation of non-contributory schemes, also referred to as ‘cash transfer schemes’, have emerged over the past two decades. These regimes aim to alleviate – or even prevent – poverty by providing a minimum benefit to individuals or families who are in need. Their characteristics vary: they may or may not be means tested; they may be paid for a limited or an unlimited period; and they may be conditional or unconditional. Some are widely known such as the *Oportunidades* programme in Mexico, the *Solidario* one in Chile, and the already-mentioned *Bolsa Familia* scheme in Brazil; all three are conditional cash transfer schemes. Similar programmes implemented in sixteen Latin American countries cover around 70 million people, or 12% of the population in the region.⁸⁶

The SPF gives access to essential health care and minimum income security for all. It should be completed, according to the ILO,⁸⁷ by two further levels comprising contributory social security benefits of guaranteed levels and voluntary insurance under government regulation. For people with tax-paying or contributory capacity, a second floor of benefits can be introduced. Finally, for those with need or wish for high protection, a top floor of voluntary private insurance arrangements can be organized, subject to regulation and public supervision in the same way as all private insurance schemes. The approach differs greatly from the three pillars model promoted by the World Bank, which left an important role to individual savings

Financial crises reduce social security revenue and reserves. Revenue flows are impacted by a reduction in the number of contributions received (including reductions in contribution rates), by a decrease in investment income on assets held and by higher expenditure on unemployment benefits. The most recent one has challenged the conventional investment wisdom that a strategy of asset diversification helps limit losses. However, uncertain times also provide an incentive to improve social coverage, as in the case of South Korea in the 1990s and of today. More generally, it has been stressed that the social and economic costs of reducing public spending levels would also involve increased human suffering and hardship, spiralling unemployment, lower consumption, reduced social cohesion and social unrest or even temporary destabilization of government as is so pertinently illustrated in Greece and more recently in Italy.⁸⁸

The ILC has voted in June 2012, the already-mentioned Recommendation No. 202 on SPFs that synthesizes the renewed approach. The text is of programmatic character, stimulating Member States to adopt a certain policy and to take the necessary measures of implementation. It provides guidelines to develop a social security strategy compatible with, and supportive of, wider national economic and social policy strategies and seeks in particular to contribute poverty reduction and the formalization of informal employment. Members should put in place and complete as rapidly as possible, and maintain, their SPFs comprising basic social security guarantees ensuring at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security. The SPFs go therefore

86. *Ibid.*, paras. 203–205.

87. *Ibid.*, paras. 390–391.

88. Intl. Soc. Sec. Assn., *Coping with the Crisis: Managing Social Security in Uncertain Times* (2012).

beyond the traditional social security schemes; it should include access to goods and services, defined as necessary at the national level, which constitute essential health care, including in the case of maternity, and access for children to nutrition, education, care and any other necessary goods and services.

The new instrument focuses on the extension of coverage to wider groups of the population (horizontal extension of coverage). With respect to progressively ensuring higher levels of protection (vertical extension of coverage), the Recommendation encourages Member States to ratify and to ensure the effective implementation of Convention No. 102 and other up-to-date ILO social security instruments.⁸⁹ The text specifies a number of guidelines for the design and implementation of national social security strategies. It encourages Member States to close coverage gaps of populations with contributory capacity through contributory schemes.

Interestingly, the Recommendation has established a system of monitoring the progress made by the States in implementing SPFs and achieving extension strategies of national social security systems.⁹⁰ It suggests the setting up of nationally defined mechanisms involving representative organizations of employers and workers and, as appropriate, representatives of other organizations and persons concerned. Special attention has to be given to the concepts, definitions and methodology used in the production of social security data, statistics and indicators as well as to their collection, compilation and publication, with due regard to privacy. Information, experiences and expertise on social security strategies, policies and practices should be exchanged among Members and with the ILO.

In summary, a sustainable system of social protection requires some basic conditions: a sound economic (financial) basis, an efficient State structure and, a strong sense of solidarity among the concerned people. The ILO underlines the essential role of social security and of its standards to achieve a more human globalization, to promote economic development and the unavoidable structural adjustments or to manage crisis⁹¹.

89. This includes to give effect to Recommendations No. 67 and 69: Intl. Lab. Conf., *Social Protection Floors for Social Justice and a Fair Globalization Report IV (2A)*, 101st Session, 180 (Intl. Lab. Org., 2012).

90. Paragraphs 19–24.

91. See again ILO, *World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice*, Geneva, 2014.