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REPORT VI (2)

International Labour Conference

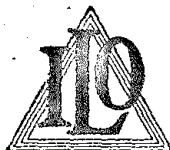
THIRTY-SECOND SESSION

GENEVA, 1949

**LABOUR CLAUSES IN
PUBLIC CONTRACTS**

Sixth Item on the Agenda

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INTRODUCTION

In accordance with the Standing Orders of the Conference, the International Labour Office prepared and communicated to the Governments a proposed Convention and Recommendation concerning labour clauses in public contracts.¹ These texts were based on the conclusions adopted by the 31st Session of the International Labour Conference (San Francisco, July 1948).

The Governments were asked to inform the Office in Geneva, by 11 December 1948, whether they had any amendments to suggest or comments to make. By 1 January 1949, replies had been received from the following Governments: Austria, Burma, Ceylon, Chile, China, Finland, France, Haiti, Iraq, Netherlands, New Zealand, Norway, Pakistan, Sweden, Switzerland, Turkey, Union of South Africa and United Kingdom.

The observations received by the Office are given in Chapter I of the present report, and a brief survey of these observations is contained in Chapter II. Chapter III contains the proposed texts, modified in the light of the Governments' replies and submitted as the basis for the second discussion of the question of labour clauses in public contracts by the Conference at its 32nd Session.

¹ International Labour Conference, 32nd Session, Geneva, 1949, Report VI (1): *Labour Clauses in Public Contracts* (Geneva, 1948).

CHAPTER I

REPLIES OF THE GOVERNMENTS

This chapter contains the observations of the Governments whose comments had been received by 1 January 1949 on the proposed Convention and Recommendation concerning labour clauses in public contracts.

The following Governments consider that the proposed texts form a suitable basis for discussion at the 32nd Session of the Conference, or state that they have no observations to make or amendments to propose: *Burma, Ceylon, Chile, China, Haiti, Iraq, Netherlands, New Zealand, Pakistan and Turkey*. In addition, the Government of *Norway* states that, since the question is satisfactorily dealt with in that country by collective agreements between the organisations concerned, it is not considered necessary to make any special observations on the proposed texts.¹ The Government of *Sweden*, which has no amendments to suggest or comments to make, states that the question of labour clauses in public contracts hardly seems to be of direct interest to countries where, as is the case in Sweden, organisations are strongly developed and practically the whole of the employment market is covered by collective agreements.

AUSTRIA

1. *Proposed Convention concerning Labour Clauses in Public Contracts*

Article 1, paragraph 4.

In its general lines, the authorisation for exemption provided for in this paragraph does not correspond to what should be the object of the regulations to be laid down in the Convention and leaves

¹ In communicating its observations, the Norwegian Government also notes that the Norwegian Employers' Confederation makes the reservation that their acknowledgment of the Convention may depend on whether there will be corresponding regulations for work carried out directly by public authorities.

much too much freedom to national legislation. Reference is made in this respect to the reply of the Austrian Government on Report VI (b) (1) submitted to the 31st Session of the International Labour Conference. In the opinion of the Government, the protection afforded by the Convention to workers should not be conditional upon the amount of funds involved in the execution of public contracts. If exceptions of this kind are considered essential, the text should make it clear that they apply only to contracts the execution of which involves the expenditure of a relatively small amount of public funds.

FINLAND

1. Proposed Convention concerning Labour Clauses in Public Contracts

Article 2, paragraphs 1 and 2.

The proposed text is acceptable subject to the deletion of the words "not less . . . than"

2. Proposed Recommendation concerning Labour Clauses in Public Contracts

Paragraph 2.

The following text is proposed for this paragraph :

2. Labour clauses in public contracts should prescribe, either directly or by reference to appropriate provisions contained in laws or regulations, collective agreements, arbitration awards or other recognised arrangements :

- (a) the normal and overtime wages (including allowances) to be paid to the various categories of workers concerned ;
- (b) the manner in which hours of work are to be regulated, including, wherever appropriate :
 - (i) the number of hours that may be worked in any day or in a longer period, in respect of which normal wages are to be paid ;
 - (ii) the average number of hours that may be worked by persons working in successive shifts on continuous processes ; and
 - (iii) where hours of work are calculated as an average, the basis on which this average may be calculated and the normal maximum number of hours that may be worked in any specified period ;
- (c) holiday and sick leave provisions.

FRANCE

1. *Proposed Convention*
concerning Labour Clauses in Public Contracts

Article 1, paragraph 1.

The Government has previously observed that in its opinion the definition of a public contract should include *at the same time* the two factors indicated in the Office report, that is, on the one hand, at least one of the parties should be a public authority, and on the other, the execution of the contract should involve the expenditure of public funds.

Since the Convention does not mention that both these factors must be present simultaneously, the Government maintains its attitude and again requests that the proposed Convention should apply to contracts fulfilling both the conditions mentioned.

Article 2, paragraphs 1 and 2.

The proposed Convention provides, in Article 2, that contracts to which it applies shall include clauses guaranteeing to the workers concerned wages, hours of work and other conditions of work which are *not less favourable than* conditions established for work of the same character in the district where the work is carried on by collective agreement, arbitration award or national laws or regulations.

It is feared that the term "not less favourable than" may lead to the conclusion that workers employed on public account should be favoured in comparison with those in private employment. Workers employed in the execution of State works should have the same wages and conditions of work as those in private employment, and not more advantageous conditions.

Therefore, the Government considers that the words "not less . . . than" should be deleted in paragraphs 1 and 2 of Article 2 of the proposed Convention.

SWITZERLAND

General Observations

The Government is still of the opinion it has always had that international regulations in the form of a Recommendation would be preferable.

*1. Proposed Convention
concerning Labour Clauses in Public Contracts*

Article 1, paragraph 1 (d).

It is considered that the term "central authority" in the proposed Convention means, for a federal Government, only the federal authority, to the exclusion of cantonal and communal authorities or of independent administrative bodies such as the federal railways. This, at least, is the position which appears to emerge from the Office reports and the discussions in the Conference Committee.

Article 1, paragraph 2.

It will always be difficult in any case for the central authority to impose on cantonal and communal authorities the application of provisions in a field concerning which the central authority has neither power nor control.

Article 1, paragraph 4.

It is feared that these provisions would lead to abuses. If the application of the Convention is to depend on the amount of expenditure involved, certain public bodies might divide contracts for a particular work among as many contractors as would be necessary to take advantage of the limit below which the Convention would no longer be applicable. It would be preferable to delete this paragraph, and to replace it by a provision which would permit exemption from the scope of the Convention of persons who are in some way on the margin of the employment market, such as those who have a reduced capacity for work or home workers.

Article 2, paragraph 1 (a).

In place of the word "substantial" it would be preferable to keep the word "important" which appears to be a better reference to the idea of numbers.

Article 4, clause (a) (ii).

It is proposed that the word "persons" should be replaced by the word "bodies". In collective agreements reference is more often made to bodies, which remain in existence throughout the life of the contract, whereas persons may change.

Article 5.

Support cannot be given to provisions which are too strict with regard to penalties and the withholding of payments. The principle of the application of penalties is fully acceptable, but it would be preferable to adopt a text which would leave the contracting authority a greater measure of freedom as to the measures to be taken.

UNION OF SOUTH AFRICA

1. *Proposed Convention*
concerning Labour Clauses in Public Contracts

Article 1, paragraph 3.

The principle is accepted, provided that the responsibility does not rest upon the Central Government to enforce the provisions of a subcontract *directly* upon the subcontractor. The competent authority should by virtue of the contract with the contractor provide that any subcontracting should be under similar labour conditions, and that in the event of any failure on the part of the subcontractor to observe such conditions the competent authority shall have the right to call upon the contractor to cancel the subcontract, or itself to cancel the contract with a contractor who fails to secure compliance with the labour conditions concerned by his subcontractor. If the "appropriate measures" go no further than this there is no objection to the clause, but the Union of South Africa cannot subscribe to the principle that in giving out contracts it is bound to follow up the performance of the work perhaps in the hands of a third or fourth subcontractor. Where the labour conditions are fixed by law and enforceable by criminal sanctions, as would be the case in the large centres of population, the matter presents no difficulty, as each subcontractor is himself an employer bound to observe such laws, and suitable means of enforcement therefor exist in the criminal courts. The difficulty lies more in cases where execution may take place outside the Union or in the rural areas and smaller towns and villages where industrial legislation is not applied to the same extent as in the industrial areas.

Article 1, paragraph 5.

The procedure of consultation suggested is both cumbersome and incorrect basically. The employees concerned do not as a rule belong to trade unions, and the nature of their duties is such that

generally speaking they are associated with the employer group in outlook and function, and it is inappropriate that unions whose interest is academic should be consulted. Many trade unions define their scope as catering for "All classes of employees in . . . industry". This wording makes them technically able to cater for those in managerial, professional and scientific positions, though in reality their interest is nil. The Government of the Union would have no objection to the principle if the workers in fact belonged to the trade unions, and would therefore suggest the insertion after the word "exist" of the words "and where the organisations of workers have a substantial number of such workers as members". Membership of even one fourth of the total number eligible would be sufficient to distinguish between an unnecessary procedure and one which would be justified by actual practical reality. The principle of actual representation by the workers is already recognised in the proposed Article 2 (1) (a).

Article 2, paragraph 3.

This clause is not acceptable. The contract itself is in most public contracts a standardised form of contract applicable to all public contracts. To require the wording of the clauses in contracts to be determined in consultation with the organisations of employers and employees concerned is to introduce into the machinery of Government private bodies which *per se* have no State function to perform. It is furthermore impracticable to contemplate that, in the hundreds of different industries concerned, the form of the contracts may differ from each other due to the individual differences in opinion expressed by different trade unions. It is, in the Union Government's view, sufficient to set out what the clause should specify, in the Convention itself, leaving it to national practice to devise a form, as far as possible uniform, for general application which shall comply with the requirements of the Convention.

The Union Government therefore suggests the addition of the following sentence at the end of Article 2, paragraph 3.

Provided that clauses included in contracts by the competent authority may be devised by the latter to be of general application in its public contracts, after consultation with any Federal organisations considered by it to be representative of employers and workers generally, and shall be deemed to be in compliance with these requirements.

Article 4.

The Convention deals with public contracts, that is to say, obligations which are contractual, and in these circumstances the

Union Government cannot see the necessity for laws or regulations or statutory intervention of any kind.

The obligations are set out in the contract itself, and the employer is thus automatically aware of his obligations by virtue of his having become a party to such obligations when binding himself to the contract.

So far as the employees are concerned, their conditions of employment are regulated by the industrial laws which fix the conditions of work, and consequently there is no necessity for them to have their attention specifically drawn to the employer's obligation under the clause concerned. The person responsible for compliance with the contract is obviously the employer who entered into the contract and his agents.

The posting of notices containing a description of the conditions of work is required by the ordinary industrial laws applicable, and should not have to be provided for in a special law. In fact, the Union Government considers that no laws are required in this matter — effective results being achieved by administrative action and the withholding or cancelling of contracts where unsatisfactory labour conditions are found to exist. It is suggested that the article as it stands should become paragraph 1, and that an additional paragraph 2 should be added as follows :

2. Whenever under the administrative arrangements of any Member :
(a) the public contract includes terms under which the workers shall be advised of their conditions of work and records of time worked and wages paid shall be kept ; (b) the contractor's premises or those of any subcontractor are liable to inspection by an inspector authorised by the competent authority ; (c) in the event of unsatisfactory labour conditions in breach of the contract being found to exist, the contract or any subcontract may be cancelled ; and (d) the contractor or any subcontractor may be debarred from being awarded further contracts for any period, such Member shall be deemed to be in compliance with the terms of this article if such administrative arrangements secure effective enforcement of the terms of this Convention.

UNITED KINGDOM

1. *Proposed Convention* *concerning Labour Clauses in Public Contracts*

Article 1, paragraph 2.

It would appear that the intention of the paragraph is to permit the competent authority to determine the manner and extent of application of the principles of the Fair Wages Clause to contracts

of authorities other than the Government itself. The United Kingdom Government are in agreement with this, and suggest that in order to make the position clear the opening words of this paragraph should read "The competent authority in each Member State shall determine the manner, etc."

Article 2, paragraph 1.

It is the understanding of the United Kingdom Government that the provisions of this paragraph do not require that contracts should contain all the alternatives (a), (b) and (c), but that they would be satisfied by the inclusion of one or other of them. It is suggested that the paragraph might be redrafted to make this quite clear.

Article 2, paragraph 2.

See the observation on Article 2, paragraph 1 above. As regards the alternatives (a) and (b) a similar point arises.

Article 4.

In so far as the Convention in its final form may be applied in this country, it will be by way of the Fair Wage Resolution of the House of Commons (and similarly in Northern Ireland). Such a Resolution is not correctly described as a "law or regulation". It is, therefore, proposed that the opening words of Article 4, "The laws or regulations", should read "The laws, regulations or other instrument". This is a technical drafting point and does not, in the opinion of the United Kingdom, affect the substance of the article.

Article 5, paragraph 1.

It is proposed that the opening words of this paragraph should read "Adequate sanctions shall be applied, by the withholding, etc."

Article 5, paragraph 2.

It is considered that the obligation imposed on Governments by this paragraph is not entirely acceptable in its present form. It could be interpreted to mean, for example, that payments under a contract should be withheld until a release in respect of wages had been received from every worker. It is suggested that this paragraph might be reworded to read:

Appropriate measures shall be taken for the purpose of enabling the workers concerned to obtain the wages to which they are entitled. Such measures may include provision for the withholding of payments under a contract.

*2. Proposed Recommendation
concerning Labour Clauses in Public Contracts*

Paragraph 2.

It is considered that a clause in public contracts as envisaged in Article 2 of the Convention provides adequate safeguard for the purpose in view, and that the terms of the proposed Paragraph 2 are impracticable.

CHAPTER II

SURVEY OF THE OBSERVATIONS OF THE GOVERNMENTS

I. OBSERVATIONS ON THE PROPOSED CONVENTION

Article I

The proposed text was as follows :

1. This Convention applies to contracts which fulfil the following conditions :

- (a) that one at least of the parties to the contract is a public authority ;
- (b) that the execution of the contract involves :
 - (i) the expenditure of funds by a public authority ; and
 - (ii) the employment of workers by the other party to the contract ;
- (c) that the contract is a contract for :
 - (i) the construction, alteration, repair or demolition of public works ;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment ; or
 - (iii) the performance or supply of services ; and
- (d) that the contract is awarded by a central authority of a Member of the International Labour Organisation for which the Convention is in force.

2. National laws or regulations shall determine the manner in which and the extent to which the Convention shall be applied to contracts awarded by authorities other than central authorities.

3. This Convention applies to work carried out by subcontractors or assignees of contracts ; appropriate measures shall be taken by the competent authority to ensure such application.

4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by national laws or regulations may be exempted from the application of this Convention.

5. The competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, exclude from the application of this Convention persons occupying positions of management or of a technical, professional or scientific character, whose

conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

The Government of Switzerland notes, in a general observation, that for a federal Government the term "central authority" covers only authorities of the federal Government to the exclusion of authorities under the control of the constituent units of the federation, local authorities and independent administrative bodies.

The Government of France considers that the proposed text of paragraph 1 does not make it clear that the Convention is to cover contracts in which at least one of the parties is a public authority and which at the same time involve the expenditure of public funds, and observes that both these conditions must obtain simultaneously.

This was the intention of the Conference at the first discussion of the question, and the text proposed by the Office was intended to give full effect to it. Since the proposed text of paragraph 1, in which are listed the various conditions pertaining to contracts covered by the Convention, does not provide, even optionally, for the elimination of any of these conditions, it follows that both conditions in question must obtain simultaneously. It does not seem necessary, therefore, to change the text as proposed.

With regard to paragraph 2, the United Kingdom Government considers that the intention was to permit the competent authority of a ratifying State to determine the manner and extent of application of the Convention to contracts entered into by authorities other than central authorities, and suggests that this provision should refer to "the competent authority" rather than to "national laws or regulations".

This modification has been made in paragraph 2 of the proposed text, and also in paragraph 4, since the same considerations would seem applicable in the latter case.

On paragraph 3, the Government of the Union of South Africa observes that the principle involved is acceptable, provided that a central Government is not required directly to enforce the provisions of a subcontract upon the subcontractor concerned. The Government describes a procedure for the application of this paragraph which it considers would be acceptable.

As at present drafted, this paragraph allows Governments full discretion as to the measures which may be considered appropriate to ensure application, in cases of subcontracting, of the labour conditions laid down in primary contracts. Its object was to lay

upon ratifying Governments the obligation to ensure that subcontracting would not be employed as a device whereby the principal purpose of the Convention might in practice be lost. Although the Office is not authorised to give definitive opinions concerning the interpretation of Convention provisions, the procedure to which the South African Government refers as not giving rise to objections would apparently satisfy the terms of the paragraph. There would accordingly seem to be no necessity for modifying the proposed text in consequence of the Government's observations.

Paragraph 4 gives rise to suggestions by the Austrian and Swiss Governments. The former considers it inappropriate to base exemptions from the scope of the Convention on the amount of public funds involved in the execution of a contract, and suggests that, if it is deemed necessary to provide for such exemptions, it should be made clear that only contracts involving small amounts of public funds may be exempted in virtue of this paragraph.

It would be justifiable to conclude that the object of the Austrian Government is not far removed, or even removed at all, from that of the Conference at the first discussion of the question, that is, that recourse would be had to the provisions of paragraph 4 only in the case of contracts involving relatively small amounts of public funds. The Office, however, finds difficulty in arriving at a form of drafting which would suitably embody this object and, at the same time, would retain the flexibility which the paragraph must obviously and necessarily have. The Conference may wish to consider the matter further.

The proposals of the Government of Switzerland on paragraph 4 would have a more far-reaching effect. It is suggested that the present proposed text should be deleted and replaced by one which would permit the exclusion from the scope of the Convention of persons who are in some manner marginal producers, for example, home workers or workers with reduced producing capacity, since it is considered that exemptions based on the amount of public funds involved in a contract may lead to abuses.

The proposals of the Swiss Government involve substantial modification of the conclusions adopted at the first discussion and would consequently require consideration by the Conference before they are acted upon.

With respect to paragraph 5 of Article 1, the Government of the Union of South Africa considers that the procedure of consultation provided for would be cumbersome and inappropriate, because the classes of employed persons concerned do not as a rule belong to

trade unions and their duties are such that, generally speaking, they are associated with the employer group rather than with trade unions. The Government therefore suggests the insertion, after the word "exist", of the words "and where the organisations of workers have a substantial number of such workers as members".

It may be recalled that the Conference conclusions on which these provisions are based were the specific object of a voted text which was discussed at some length by the Committee on Wages at the San Francisco Session of the Conference, and that one of the principal reasons given in support of that text was that similar provision for consultation has been included in a number of Conventions. Furthermore, the reference to consultation is subject to two qualifications expressed in the words "concerned" and "where such exist". In cases in which the procedure of consultation would be clearly inappropriate, recourse may be had to these qualifications; this course, it may be assumed, entered into the considerations which led the Conference to reach the decisions it did. Therefore, pending further consideration of the proposal at the second discussion, the suggested modification has not been introduced in the text.

Article 2

The proposed text was as follows :

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the district where the work is carried on :

- (a) by collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned ; or
- (b) by arbitration award ; or
- (c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in the manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than :

- (a) those established by collective agreement or other recognised machinery of negotiation, arbitration, or national laws or regulations, for work of the same character in the nearest appropriate district ; or
- (b) the general level observed by employers in the trade or industry in which the contractor is engaged whose general circumstances are similar.

3. The clauses to be included in contracts shall be determined by the competent authority, in consultation with the organisations of employers and workers concerned, where such exist, and shall be included in the advertised specifications calling for contract bids.

On clause (a) of paragraph 1, the Swiss Government suggests the substitution of the word "important" for the word "substantial".

It is not clear whether this modification is merely a verbal change, or whether it implies a substantial change and would consequently require Conference consideration. Since the proposed text was based on Conference decisions which were the subject of rather prolonged discussion, it appears preferable to maintain the text and to invite the Conference at the second discussion to consider the suggested change.

With regard to paragraphs 1 and 2, the Governments of Finland and France propose the deletion of the qualification expressed in the term "not less favourable than". The French Government observes in support of the proposed modification that the present text may lead to the conclusion that workers employed on public account should have more favourable conditions than those in private employment.

The object of the language to which exception is taken was to give expression to a defined standard, in so far as definition may be secured without introducing an excessive degree of rigidity. The formula used here, as well as similar ones to the same effect, has previously been adopted in Conventions — *e.g.*, the Workmen's Compensation (Accidents) Convention, 1925, Articles 1 and 3 (2) — and, so far as the Office is aware, the kind of difficulty to which the French Government refers has not resulted therefrom. Pending Conference consideration of this proposal, the Office does not feel justified at this stage in amending the text along the lines suggested.

With regard to clauses (a), (b) and (c) of paragraph 1 and clauses (a) and (b) of paragraph 2, the United Kingdom Government suggests that the text should be redrafted to make it clear that alternative methods of application are intended, and that the requirements of the Convention would be satisfied by the application of one among these clauses in the case of both paragraphs.

It does not seem necessary to modify drastically the present drafting of the text, since the separation of the clauses in question by the word "or" would appear to make it sufficiently clear that the various provisions are alternative. However, the position would be made clearer by the substitution, in the second line of paragraph 2, of the indefinite article "a" for the definite article in the words

“ in the manner referred to ”. This change has been introduced in the proposed text of paragraph 2.

On paragraph 3, the Government of the Union of South Africa, proposing the addition of a new proviso, observes that in cases in which the labour conditions prescribed in public contracts are in the form of a standard clause applicable in all contracts, it would be unacceptable to require consultation concerning the drafting of the clause on each occasion that a contract is awarded. The Government further notes that it would be impracticable to contemplate awarding contracts in the various industries concerned in forms which differ because of individual differences of opinion of different trade unions.

With regard to the latter point, it may be noted that differences in the form of contracts were not envisaged, but rather differences in the terms of conditions of work. In order to clarify this point, the text has been changed so as to refer to “ the terms of the clauses to be included in contracts ”. Furthermore, it seems desirable to make provision for cases in which these terms do not change from contract to contract but remain constant, thereby obviating the need for carrying on consultations with employers’ and workers’ organisations which might be repetitious. With this object, the words “ and any variations thereof ” have been introduced in the proposed text. Finally, as a consequential change indicated by these modifications, the provision concerning the inclusion of the labour clauses in the advertised specifications calling for contract bids has been separated from paragraph 3 and made the subject of a new paragraph.

Accordingly, the following text is proposed for paragraphs 3 and 4 of Article 2 :

3. The terms of the clauses to be included in contracts, and any variations thereof, shall be determined by the competent authority, in consultation with the organisations of employers and workers concerned, where such exist.

4. The terms of the clauses to be included in contracts shall be included in the advertised specifications calling for contract bids.

Article 3

No proposals relating to this article have been received.

Article 4

The proposed text was as follows :

The laws or regulations giving effect to the provisions of this Convention :

(a) shall :

(i) be brought to the notice of all persons concerned ;

- (ii) define the persons responsible for compliance therewith ; and
 - (iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work ; and
- (b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of :
- (i) adequate records of the time worked by, and the wages paid to, the workers concerned ; and
 - (ii) a system of inspection adequate to ensure effective enforcement.

The United Kingdom Government suggests, as a verbal change, that the opening words of the article should read "the laws, regulations or other instrument." This change has been introduced in the proposed text.

The Government of Switzerland suggests, with respect to clause (a) (ii), that the word "persons" should be replaced by the word "bodies", on the grounds that in collective agreements reference is more often made to bodies than to persons.

It is generally understood, however, that the word "persons" in this context covers both individuals and corporate persons, or either, and it would therefore not seem necessary to amend the text as proposed.

The South African Government proposes the addition of a new paragraph the object of which is to eliminate the need for special laws or regulations relating to enforcement of the Convention if provision is already made by ordinary legislation along the lines laid down in this article.

It may be observed, however, that the effect of Article 4 is not to require the enactment of special legislation in order to satisfy its requirements, and that as at present drafted it gives Governments discretion as to the methods considered most appropriate to apply the provisions of the article. With particular reference to clause (b), it will be remembered that the Conference at the first discussion decided to insert the words "except where other arrangements are operating to ensure effective enforcement" for the specific purpose of providing a necessary margin of flexibility. The proposed text would appear to be sufficiently flexible to meet the situation which the South African Government has in view.

Article 5

The proposed text was as follows :

1. Adequate penalties shall be imposed, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.

2. Appropriate measures shall be taken, by the withholding of payments under a contract or otherwise, to ensure that the workers concerned are paid all wages to which they are entitled.

The Swiss Government comments that it would be preferable to leave the contracting authority a greater measure of freedom as to the penalties to be applied.

It is not clear, however, what modification of the proposed text is indicated, since in the case of both paragraphs the words "or otherwise" were inserted by the Conference with a view to giving Governments discretion as to the specific types of penalty to be applied.

The United Kingdom Government proposes drafting changes in paragraph 1 so as to have the opening words read as follows: "adequate sanctions shall be applied, etc." The text has been amended accordingly.

On paragraph 2, the United Kingdom Government proposes a new text, because in its view the present text may be interpreted to mean that payments under a contract should be withheld until a release in respect of wages had been received from every worker.

This proposal requires consideration by the Conference, but it may be observed that the present drafting of paragraph 2 leaves Governments free to decide what measures would be appropriate to ensure the full payment of wages to the workers concerned. The effect of the qualification "or otherwise" is to make illustrative rather than obligatory the reference to the particular measure of withholding contract payments.

Articles 6-10

No proposals relating to these articles have been received.

II. OBSERVATIONS ON THE PROPOSED RECOMMENDATION

Paragraph 2.

The proposed text was as follows:

2. Labour clauses in public contracts should prescribe, either directly or by reference to appropriate provisions contained in laws or regulations, collective agreements, arbitration awards or other recognised arrangements:

- (a) the normal and overtime rates of wages (including allowances) to be paid to the various categories of workers concerned;
- (b) the manner in which hours of work are to be regulated, including, wherever appropriate:

- (i) the number of hours that may be worked in any day or in any week, in respect of which normal rates of wages are to be paid ;
 - (ii) the average number of hours that may be worked by persons working in successive shifts on continuous processes ; and
 - (iii) where hours of work are calculated as an average, the number of weeks over which this average may be calculated and the normal maximum number of hours that may be worked in any week ;
- (c) holiday and sick leave provisions.

The United Kingdom Government, considering that Article 2 of the proposed Convention provides adequate safeguards for the purpose in view, suggests that the provisions of this paragraph of the Recommendation are impracticable. It will be for the Conference to decide whether it wishes to act on these considerations and to delete paragraph 2.

The Government of Finland proposes a new text for paragraph 2, the effect of which is to make more flexible provision for the regulation of normal hours of work, in subparagraph (b) (i), and of hours of work calculated as an average over a period of time, in subparagraph (b) (iii).

There would seem to be some advantage in providing for the additional element of flexibility sought by the Finnish Government, and the proposed text has been modified accordingly.

CHAPTER III

PROPOSED TEXTS

- This chapter contains the draft texts of the proposed Convention and Recommendation concerning labour clauses in public contracts which are submitted as the basis for the second discussion of the question by the Conference at its 32nd Session.
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I

PROPOSED CONVENTION
CONCERNING LABOUR CLAUSES IN PUBLIC CONTRACTS

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this day of of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Labour Clauses (Public Contracts) Convention, 1949 :

Article 1

1. This Convention applies to contracts which fulfil the following conditions :

- (a) that one at least of the parties to the contract is a public authority ;
- (b) that the execution of the contract involves :
 - (i) the expenditure of funds by a public authority ; and
 - (ii) the employment of workers by the other party to the contract ;
- (c) that the contract is a contract for :
 - (i) the construction, alteration, repair or demolition of public works ;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment ; or
 - (iii) the performance or supply of services ; and

I

PROJET DE CONVENTION CONCERNANT LES CLAUSES DE TRAVAIL DANS LES CONTRATS PASSÉS PAR UNE AUTORITÉ PUBLIQUE

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 8 juin 1949 en sa trente-deuxième session,

Après avoir décidé d'adopter diverses propositions relatives aux clauses de travail dans les contrats passés par une autorité publique, question qui constitue le sixième point à l'ordre du jour de la session,

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

adopte, ce jour de mil neuf cent quarante-neuf, la convention ci-après, qui sera dénommée Convention sur les clauses de travail (contrats publics), 1949 :

Article 1

1. La présente convention s'applique aux contrats qui remplissent les conditions suivantes :

- a) l'une au moins des parties au contrat est une autorité publique ;
- b) l'exécution du contrat entraîne :
 - i) la dépense de fonds par l'autorité publique ;
 - ii) l'emploi de travailleurs par l'autre partie au contrat ;
- c) le contrat est passé en vue de :
 - i) la construction, la transformation, la réparation ou la démolition de travaux publics ;
 - ii) la fabrication, l'assemblage, la manutention ou le transport de matériaux, fournitures ou outillage ;
 - iii) l'exécution ou la fourniture de services ;

(d) that the contract is awarded by a central authority of a Member of the International Labour Organisation for which the Convention is in force.

2. The competent authority shall determine the manner in which and the extent to which the Convention shall be applied to contracts awarded by authorities other than central authorities.

3. This Convention applies to work carried out by subcontractors or assignees of contracts; appropriate measures shall be taken by the competent authority to ensure such application.

4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by the competent authority may be exempted from the application of this Convention.

5. The competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, exclude from the application of this Convention persons occupying positions of management or of a technical, professional or scientific character, whose conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

Article 2

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the district where the work is carried on—

(a) by collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or

(b) by arbitration award; or

(c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than—

d) le contrat est passé par une autorité centrale d'un Membre de l'Organisation internationale du Travail pour lequel la convention est en vigueur.

2. L'autorité compétente déterminera dans quelles conditions et dans quelle mesure la convention s'appliquera aux contrats passés par des autorités autres que les autorités centrales.

3. La présente convention s'applique aux travaux exécutés par des sous-contractants ou par des cessionnaires de contrats; des mesures appropriées seront prises par l'autorité compétente pour assurer l'application de la convention auxdits travaux.

4. Les contrats entraînant une dépense de fonds publics d'un montant qui ne dépassera pas une limite déterminée par l'autorité compétente pourront être exemptés de l'application de la présente convention.

5. L'autorité compétente pourra, après consultation des organisations d'employeurs et de travailleurs intéressées, là où de telles organisations existent, exclure du champ d'application de la présente convention les personnes qui occupent des postes de direction ou de caractère technique ou scientifique, dont les conditions d'emploi ne sont pas réglementées par la législation nationale, une convention collective ou une sentence arbitrale et qui n'effectuent pas normalement un travail manuel.

Article 2

1. Les contrats auxquels la présente convention s'applique contiendront des clauses garantissant aux travailleurs intéressés des salaires (y compris les allocations), une durée du travail et d'autres conditions de travail au moins aussi favorables que les conditions établies, pour un travail de même nature dans la même région :

a) soit par voie de convention collective ou par une autre procédure agréée de négociations entre des organisations d'employeurs et de travailleurs représentant une proportion substantielle des employeurs et des travailleurs de la profession ou de l'industrie intéressées ;

b) soit par voie de sentence arbitrale ;

c) soit par voie de législation nationale.

2. Lorsque les conditions de travail mentionnées au paragraphe précédent ne sont pas réglementées suivant l'une des manières indiquées ci-dessus dans la région où le travail est effectué, les clauses devant être insérées dans les contrats auxquels la présente convention s'applique garantiront aux travailleurs intéressés des salaires (y compris les allocations), une durée du travail et d'autres conditions de travail au moins aussi favorables que :

- (a) those established by collective agreement or other recognised machinery of negotiation, arbitration, or national laws or regulations, for work of the same character in the nearest appropriate district ; or
- (b) the general level observed by employers in the trade or industry in which the contractor is engaged whose general circumstances are similar.

3. The terms of the clauses to be included in contracts and any variations thereof, shall be determined by the competent authority, in consultation with the organisations of employers and workers concerned, where such exist.

4. The terms of the clauses to be included in contracts shall be included in the advertised specifications calling for contract bids.

Article 3

Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable in virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.

Article 4

The laws, regulations or other instrument giving effect to the provisions of this Convention—

- (a) shall :
 - (i) be brought to the notice of all persons concerned ;
 - (ii) define the persons responsible for compliance therewith ; and
 - (iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work ; and
- (b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of—
 - (i) adequate records of the time worked by, and the wages paid to, the workers concerned ; and
 - (ii) a system of inspection adequate to ensure effective enforcement.

- a) soit les conditions établies par voie de convention collective ou par une autre procédure agréée de négociations, par voie de sentence arbitrale ou par voie de législation nationale, pour un travail de même nature dans la plus proche région indiquée ;
- b) soit le niveau général observé par les employeurs appartenant à la même profession ou à la même industrie que la partie avec laquelle le contrat est passé, et se trouvant dans des circonstances analogues.

3. Les termes des clauses devant être insérées dans les contrats, et toutes modifications de ces termes, seront déterminés par l'autorité compétente, après consultation des organisations d'employeurs et de travailleurs intéressées, là où de telles organisations existent.

4. Les termes des clauses devant figurer dans les contrats seront insérés dans les cahiers des charges.

Article 3

Lorsque des dispositions appropriées relatives à la santé, à la sécurité et au bien-être des travailleurs occupés à l'exécution de contrats ne sont pas déjà applicables en vertu de la législation nationale, d'une convention collective ou d'une sentence arbitrale, l'autorité compétente doit prendre des mesures adéquates pour assurer aux travailleurs intéressés des conditions de santé, de sécurité et de bien-être justes et raisonnables.

Article 4

Les lois, règlements ou autres instruments donnant effet aux dispositions de la présente convention :

- a) doivent :
 - i) être portés à la connaissance de tous intéressés ;
 - ii) préciser les personnes chargées d'en assurer l'exécution ;
 - iii) exiger que des affiches soient apposées d'une manière apparente dans les établissements ou autres lieux de travail, en vue d'informer les travailleurs de leurs conditions de travail ;
- b) doivent, sauf lorsque d'autres mesures sont en vigueur qui garantissent une application effective des dispositions considérées, prévoir :
 - i) la tenue de registres adéquats indiquant la durée du travail effectuée et les salaires versés aux travailleurs intéressés ;
 - ii) l'institution d'un régime d'inspection propre à assurer l'application effective de ladite législation.

Article 5

1. Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.

2. Appropriate measures shall be taken, by the withholding of payments under a contract or otherwise, to ensure that the workers concerned are paid all wages to which they are entitled.

Article 6

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organisation full information concerning the measures by which effect is given to the provisions of this Convention.

Article 7

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present article.

Article 8

1. This Convention does not apply to contracts entered into before the coming into force of the Convention for the Member concerned.

2. The denunciation of this Convention shall not affect the application thereof in respect of contracts entered into while the Convention was in force.

Article 5

1. Des sanctions adéquates, par la voie d'un refus de contracter ou par toute autre voie, seront appliquées en cas d'infraction à l'observation et à l'application des dispositions des clauses de travail insérées dans les contrats publics.

2. Des mesures appropriées seront prises, par des retenues sur les paiements dus aux termes d'un contrat ou autrement, en vue d'assurer le paiement aux travailleurs intéressés de tous les salaires auxquels ils ont droit.

Article 6

Les rapports annuels qui doivent être présentés aux termes de l'article 22 de la Constitution de l'Organisation internationale du Travail contiendront des renseignements complets sur les mesures donnant effet aux dispositions de la présente convention.

Article 7

1. Lorsque le territoire d'un Membre comprend de vastes régions où, en raison du caractère clairsemé de la population ou en raison de l'état de leur développement, l'autorité compétente estime impraticable d'appliquer les dispositions de la présente convention, elle peut exempter lesdites régions de l'application de la convention soit d'une manière générale, soit avec les exceptions qu'elle juge appropriées à l'égard de certaines entreprises ou de certains travaux.

2. Tout Membre doit indiquer, dans son premier rapport annuel à soumettre sur l'application de la présente convention en vertu de l'article 22 de la Constitution de l'Organisation internationale du Travail, toute région pour laquelle il se propose d'avoir recours aux dispositions du présent article, et doit donner les raisons pour lesquelles il se propose d'avoir recours à ces dispositions. Par la suite, aucun Membre ne pourra recourir aux dispositions du présent article, sauf en ce qui concerne les régions qu'il aura ainsi indiquées.

3. Tout Membre recourant aux dispositions du présent article doit indiquer, dans ses rapports annuels ultérieurs, les régions pour lesquelles il renonce au droit de recourir auxdites dispositions.

Article 8

1. La présente convention ne s'applique pas aux contrats passés avant l'entrée en vigueur de la convention pour le Membre intéressé.

2. La dénonciation de la convention n'affectera pas l'application des dispositions aux contrats passés avant que la dénonciation n'ait pris effet.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate—

- (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification ;
- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications ;
- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable ;
- (d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of sub-paragraph (b), (c) or (d) of paragraph 1 of this article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article x, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications ; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation

Article 9

1. Les déclarations qui seront communiquées au Directeur général du Bureau international du Travail, conformément au paragraphe 2 de l'article 35 de la Constitution de l'Organisation internationale du Travail, devront faire connaître :

- a) les territoires pour lesquels le Membre intéressé s'engage à ce que les dispositions de la convention soient appliquées sans modification ;
- b) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées avec des modifications, et en quoi consistent lesdites modifications ;
- c) les territoires auxquels la convention est inapplicable et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;
- d) les territoires pour lesquels il réserve sa décision en attendant un examen plus approfondi de la situation à l'égard desdits territoires.

2. Les engagements mentionnés aux alinéas *a)* et *b)* du premier paragraphe du présent article seront réputés parties intégrantes de la ratification et porteront des effets identiques.

3. Tout Membre pourra renoncer par une nouvelle déclaration à tout ou partie des réserves contenues dans sa déclaration antérieure en vertu des alinéas *b)*, *c)* et *d)* du premier paragraphe du présent article.

4. Tout Membre pourra, pendant les périodes au cours desquelles la présente convention peut être dénoncée conformément aux dispositions de l'article *x*, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes de toute déclaration antérieure et faisant connaître la situation dans des territoires déterminés.

Article 10

1. Les déclarations communiquées au Directeur général du Bureau international du Travail conformément aux paragraphes 4 et 5 de l'article 35 de la Constitution de l'Organisation internationale du Travail doivent indiquer si les dispositions de la convention seront appliquées dans le territoire avec ou sans modification ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle doit spécifier en quoi consistent lesdites modifications.

2. Le Membre ou les Membres ou l'autorité internationale intéressés pourront renoncer entièrement ou partiellement, par une déclaration ultérieure, au droit d'invoquer une modification indiquée dans une déclaration antérieure.

3. Le Membre ou les Membres ou l'autorité internationale intéressés pourront, pendant les périodes au cours desquelles la

in accordance with the provisions of Article *x*, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

II

PROPOSED RECOMMENDATION CONCERNING LABOUR CLAUSES
IN PUBLIC CONTRACTS

The General Conference of the International Labour Organisation,*

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and

Having decided that these proposals shall take the form of a Recommendation supplementing the Labour Clauses (Public Contracts) Convention, 1949,

adopts this day of of the year one thousand nine hundred and forty-nine the following Recommendation, which may be cited as the Labour Clauses (Public Contracts) Recommendation, 1949 :

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto :

1. Provisions substantially similar to those of the labour clauses in public contracts should apply in the same manner in cases where, as a measure of public policy, economic benefits are extended to private employers by such means as the granting of subsidies or of licences to operate a public utility.

2. Labour clauses in public contracts should prescribe, either directly or by reference to appropriate provisions contained in laws or regulations, collective agreements, arbitration awards or other recognised arrangements—

(a) the normal and overtime rates of wages (including allowances) to be paid to the various categories of workers concerned ;

convention peut être dénoncée conformément aux dispositions de l'article x, communiquer au Directeur général une nouvelle déclaration modifiant à tout autre égard les termes d'une déclaration antérieure et faisant connaître la situation en ce qui concerne l'application de cette convention.

II

PROJET DE RECOMMANDATION CONCERNANT LES CLAUSES DE TRAVAIL DANS LES CONTRATS PASSÉS PAR UNE AUTORITÉ PUBLIQUE

• La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 8 juin 1949, en sa trente-deuxième session,

Après avoir décidé d'adopter diverses propositions relatives aux clauses de travail dans les contrats passés par une autorité publique, question qui constitue le sixième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'une recommandation complétant la convention sur les clauses de travail (contrats publics), 1949,

adopte, ce jour de mil neuf cent quarante-neuf, la recommandation ci-après, qui sera dénommée Recommandation sur les clauses de travail (contrats publics), 1949 :

La Conférence recommande aux Membres d'appliquer les dispositions suivantes, aussitôt que les conditions nationales le permettront, et de présenter au Bureau international du Travail, conformément à ce que décidera le Conseil d'administration, des rapports exposant les mesures prises pour les mettre en application :

1. Des dispositions substantiellement analogues à celles qui figurent dans les clauses de travail des contrats publics devraient s'appliquer de la même manière que ces dernières aux cas où, dans l'intérêt public, des avantages économiques, tels que l'octroi de subventions ou l'autorisation d'exploiter un service d'utilité publique, sont accordés aux employeurs privés.

2. Les clauses de travail dans les contrats publics devraient prescrire soit directement, soit par référence aux dispositions appropriées contenues dans la législation, dans des conventions collectives, dans des sentences arbitrales ou dans d'autres accords reconnus :

a) les taux de salaires normaux et les taux de salaires majorés pour les heures supplémentaires (y compris les allocations) qui devront être payés aux différentes catégories de travailleurs intéressés ;

- (b) the manner in which hours of work are to be regulated, including wherever appropriate—
- (i) the number of hours that may be worked in any day, week or other specified period in respect of which normal rates of wages are to be paid ;
 - (ii) the average number of hours that may be worked by persons working in successive shifts on continuous processes ; and
 - (iii) where hours of work are calculated as an average, the period of time over which this average may be calculated and the normal maximum number of hours that may be worked in any specified period ;
- (c) holiday and sick leave provisions.

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- b) la méthode de réglementation de la durée du travail, y compris, s'il y a lieu :
- i) le nombre d'heures de travail qui pourront être effectuées par jour, par semaine ou au cours de toute autre période déterminée et pour lesquelles le salaire sera payé au taux normal ;
 - ii) la durée moyenne du travail qui pourra être effectuée par des personnes employées par équipes successives à des travaux de caractère continu ;
 - iii) quand la durée du travail est calculée d'après une durée moyenne, la période sur laquelle cette durée moyenne pourra être calculée ainsi que le nombre maximum des heures de travail au cours d'une période déterminée ;
- c) les dispositions sur les vacances et congés de maladie.



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