Labour Contracting and Its Regulation: II

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IN THE FIRST PART of this article, which was published last month, we examined a number of examples of labour contracting in both developing and industrialised market economies.[2] We also looked at the main reasons for the growth and persistence of this form of employment and considered the various drawbacks and abuses to which it can give rise. We shall now describe the measures taken in various countries—by legislation, judicial decisions, collective agreements and other non-statutory means—to prohibit or limit the use of labour contracting or to provide effective safeguards for the workers concerned. The article concludes with a brief account of the action taken by the ILO in this field.

It is worth recalling that in principle we are concerned here only with *labour* contracting, i.e. the supplying of labour by an intermediary (excluding temporary help agencies) to a principal employer, and not with the contracting out of work (job contracting), though this cannot be ignored completely since it is often used as a cover for labour-only contracting practices.

Legislative and other means of controlling labour contracting

The improvement of a country's general economic and social situation and the correction of imbalances in its employment market are clearly of fundamental importance in eliminating the abusive contract labour practices that were described in the first part of this study.[3] Since

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[2] An attempt was made, in particular, to distinguish between labour contracting and the contracting out of work (job contracting).

[3] Fuller employment opportunities will, for instance, actually eliminate problems of the kind mentioned in ILO: *Contract labour in the petroleum industry*, Report II, Petroleum Committee, Fifth Session, Caracas, 1955, Geneva 1956 (Geneva, 1955), p. 7: " Cases are known . . . [where] the contractor has, by collusion with his workers, obtained their signatures alongside the prescribed rates shown in the register, thereby conveying the impression to the investigator that the correct wages had been received by the workers, when in fact a smaller amount had actually been paid to the workers with their consent. It is also not uncommon for a contract worker who actually receives less than the prescribed wage rate to declare, at the time of an inspection carried out by a government official, that he is being paid the prescribed

there are many reasons for the persistence of contract labour systems, however, it has been found necessary to attack their inherent evils more directly. Various methods have been used to put an end to or bring under control the activities of labour contractors and to protect the interests of the workers employed by them. Legislative measures are most common, but the courts have played a role too, and there are also instances where regulation has been achieved by voluntary agreement, collective bargaining, the terms of the contract entered into between the principal employer and the contractor, or other practical means.

Legislation and case law

In adopting measures to control contract labour practices, legislators appear to have had two aims: first, to protect workers from exploitation by intermediaries and to guarantee those concerned access to employment, earnings, social security coverage and social welfare on equal terms with other workers; and secondly, to retain the positive aspects of labour contracting while eliminating the abuses. The problem is thus not a simple one of outlawing labour contracting in its entirety, but rather the more delicate task of defining in unambiguous terms those contract labour practices which are acceptable, in certain conditions, and those which must be proscribed. A number of criteria have been used for this purpose, but problems appear to have arisen in their application because of the great variety of practices used and the difficulty of drawing a sharp dividing line between labour contracting and the contracting out of work.

One type of measure which must be mentioned, since it is relevant to the control of labour contracting, is legislation designed to regulate the employment market—for example restrictions on the activities of labour recruiters and their supervision by the public authorities, or the institution of free public employment services combined with the prohibition or control of fee-charging placement agencies. Both these aspects of the problem have been widely discussed elsewhere and have, moreover, been the subject of various international labour instruments [1]; they will therefore not be analysed further here, except to note that despite the widespread introduction of such legislation, labour contracting practices still exist and have given rise to abuses, as shown above, even in some highly developed countries.

wages, in return for the employment by the contractor of several members of his family who may be paid at rates even lower than his own, in order that the total family income may be adequate to meet the high cost of living in the locality."

[1] The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105); the Recruiting of Indigenous Workers Convention, 1936 (No. 50); the Employment Service Convention and Recommendation, 1948 (Nos. 88 and 83 respectively); the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96); and the Migration for Employment Convention and Recommendation (Revised), 1949 (Nos. 97 and 86 respectively).

Legislative provisions dealing specifically with this issue range from a simple prohibition of labour contracting, defined as the procurement of labour for an employer by a third party who makes a profit thereby, to detailed prescriptions regarding the joint and several responsibilities of the principal employer and the contractor as regards the protection of the workers concerned. The following examples illustrate the varying approaches adopted, as well as the development and further refinement of this legislation by a number of countries in recent years.

There has been a general prohibition of labour contracting under Libyan law since 1962. The Libyan Labour Code adopted in 1970 provides in addition that " a contract whereby one party undertakes only to recruit workers for employment by the other party or his representative in return for a fee paid by the employer to the supplier who pays the workers' wages shall be null and void ".[1]

In Italy an Act of 1960 [2] prohibits the giving out of work of any kind to contractors where the capital, machinery or plant used in the work ordered is supplied by the principal employer, even in cases where the contractor pays the principal employer for its use. These provisions are intended to eliminate all contracts whose real object is the supply of labour only, even when they are disguised as contracts for work or services by the real or fictitious leasing of material or equipment by the principal to the contractor. Penalties for infringements are imposed on both the principal and the contractor; workers found to be employed in violation of this prohibition are deemed to be in the employ of the principal who benefits from their work. Legitimate contractors, on the other hand, are those who assume full responsibility for the organisation and supervision of the work ordered; the Act imposes on them specific obligations regarding the protection and welfare of the workers they employ.

Commercial labour contracting in the Federal Republic of Germany is regulated under an Act of 1972.[3] A professional labour contractor may now only operate under a licence, to obtain which he must satisfy the licensing authority that he is able, and can be relied upon, to meet all the obligations an employer normally assumes towards his workers. In principle, the contracts between him and the workers he engages must be

[1] Act No. 58-2970: Labour Code, dated 1 May 1970 (ILO: *Legislative Series*, 1970—Libya 1), s. 9. Subsequent references to the *Legislative Series* will be indicated by the abbreviation *LS*.

[2] Act No. 1369, to prohibit subcontractors or intermediaries and the intervention of third parties in the performance of work . . ., dated 23 October 1960 (*LS*, 1960—It. 1).

[3] Manpower Provision Act, dated 7 August 1972 (*LS*, 1972—Ger. F.R. 2). This new legislation was in large measure inspired by the need to regulate the position of temporary help agencies, but its scope covers labour contracting in general. In so far as it refers to temporary help agencies, it is analysed in greater detail in G. M. J. Veldkamp and M. J. E. H. Raetsen: " Temporary work agencies and Western European social legislation ", in *International Labour Review*, Feb. 1973, p. 125.

without limit of time. All contracts concluded with the principal employer must be reported to the licensing authority and may not exceed a duration of three months.[1] The principal employer has a secondary responsibility for the payment of social security contributions and workers found to be employed by an unlicensed contractor are deemed to be in the employ of the principal using their services.

In France a decree of 2 March 1848 prohibited the exploitation of workers by subcontractors (*marchandage*); this provision was consolidated in the French Labour Code in 1919.[2] In the view of certain commentators, however, the interpretation given to this prohibition by the courts has impeded its effective application. The Supreme Court of Appeal has insisted on evidence of exploitation in the sense of illegitimate profit and intent to injure the interests of the workers concerned, either by cheating them of their legitimate earnings or in some other way, proof of which is of course difficult to obtain. This judicial ruling is still valid at the present time, in spite of criticism by various authors.[3] Prosecutions under this provision have, in fact, been rare. Better protection against labour contracting abuses seems to be offered by other provisions of the Labour Code[4]: these lay down that, where the contractor is not the registered owner of a business and the work is carried out on the premises of the principal employer, the latter shall be held responsible for the payment of wages and paid leave due to the contractor's employees, compensation for employment injuries, family allowances and social insurance contributions, if the contractor should become insolvent. The principal employer must also apply to such workers the conditions of work, leave, safety and health prescribed in the Labour Code, as if they were his own employees.[5] These provisions also specify that where the work is carried out in workplaces other than the premises of the

[1] See also Georg Sandmann: " Regelung der Leiharbeit ", in *Bundesarbeitsblatt* (Bonn), No. 9, 1972, pp. 499-502.

[2] Book I, s. 30b, now s. L. 125-1 of the new French Labour Code (Act No. 73-4, dated 2 January 1973). For a historical description of this legislation, see Henri Capitant and Paul Cuche: *Cours de législation industrielle*, Second edition (Paris, Librairie Dalloz, 1921), pp. 482 ff.

[3] Ibid., pp. 488-489; A. Brun and H. Galland: *Droit du travail* (Paris, Ed. Sirey, 1958), pp. 196-198.

[4] Book I, ss. 30c and 30d, and Book II, s. 1c (respectively ss. L. 125-2, R. 125-1 and L. 200-3 of the new Code).

[5] The new Labour Code of 1973 further specifies (s. L. 125-3) that if an employer who is not defined (under s. L. 124-1) as a temporary help agency places one or more of his permanent employees at the disposal of a third party temporarily, legislation and collective agreements applicable to the workforce of this third party which relate to hours of work, night work, weekly rest and public holidays, safety and health, and the employment of female, young and foreign workers are equally applicable to the said employees; the latter count towards the number of employees required for the election of workers' representatives, to whom they also have the right to submit grievances. In addition, ss. 23-31 of the Act of 3 January 1972 respecting temporary employment (*LS*, 1972—Fr. 1), which deal with social security and employment injuries, are made applicable in such cases.

principal employer, a notice indicating the latter's name and address must be posted in the workplace, and the principal is held responsible, if the contractor defaults, for all the payments just mentioned except those relating to employment injuries. The courts have frequently relied on these provisions, but sometimes difficulties have arisen in determining the status of the parties concerned—i.e. that of the principal employer and/or the contractor.[1] The general regulations concerning minimum wages are also of special interest as regards the protection of contract workers.

Many of the countries that were formerly French colonies similarly prohibit *marchandage*. The Labour Code of the Congo, for example, provides in explicit terms that " competitive wage bargaining or sweated labour, i.e. subcontracting having as its exclusive object the obtaining of manpower for the principal contractor, is prohibited as constituting exploitation of workers ".[2]

The French Labour Code for Overseas Territories[3], which was adopted in 1952 and had a significant influence on the legislation of these countries after they became independent, defined the small jobber, or *tâcheron*, as " a person who, himself recruiting the necessary workers, enters into an oral or written contract with a contractor [meaning, here, the principal employer] to carry out specified work or to furnish specified services for an agreed price ". The Code established the vicarious liability of the principal employer for all the obligations of the *tâcheron*—in the event of the latter becoming insolvent—where the work was carried out in the workshops or other premises of the principal, but only for the payment of wages due to the *tâcheron's* employees if the work was carried out elsewhere; in addition, a notice had to be permanently displayed in all the workshops and other premises used indicating the name and address of the principal. Similar provisions are found in the legislation of many French-speaking African States such as Cameroon, the Central African Republic, Chad, the Congo, Gabon, Madagascar, Mali, Mauritania, Senegal, Tunisia, Upper Volta and Zaire.[4] In some countries the law also provides that the public authorities should be kept informed as

[1] Brun and Galland, op. cit., revised 1968, pp. 120-121.

[2] Act No. 10-64, to establish the Labour Code, dated 25 June 1964 (*LS*, 1964—Congo (Bra.) 1), s. 73.

[3] Act No. 52-1322, to establish a Labour Code in the territories and associated territories under the Ministry for Overseas France, dated 15 December 1952 (*LS*, 1952—Fr. 5), ss. 64-67.

[4] The Mauritanian Labour Code of 1963 (*LS*, 1963—Mau. 1), Book I, s. 34, defines the *tâcheron* still more explicitly as " an intermediary not registered in the commercial registry and not owning a commercial undertaking who occasionally recruits workers and may provide them with tools and raw materials to carry out a specified piece of work either directly for the person who orders the work to be done, or as a middleman ", the exploitation of workers by a *tâcheron* being prohibited as well as the farming out of all or part of the contracts entrusted to him. Under the Labour Code of Senegal, dated 15 June 1961 (*LS*, 1962—Sen. 2B), which is very similar the *tâcheron* must participate personally in the work as a " master workman " (s. 75) and the principal must settle his account with the *tâcheron* at the workplace, in the presence of the latter's workers, on the days fixed for the payment of their wages (s. 78).

regards the terms of the contract entered into by the contractor (*tâcheron*) and the principal; for example, in the Congo the contractor has to report to the labour inspector the nature and probable duration of the work and the place where it is to be carried out; he is further required to post up notices concerning his employees' conditions of work, wage scales, etc., even where these are the same as those applied by the principal employer to his own employees. In Mauritania the principal employer has to deposit a copy of the contract with the labour inspectorate and the contractor is required to forward to the same authority a copy of the notice posted giving the name and address of the principal employer, together with a declaration stating the address of the work sites to be used and the number of workers he intends to employ.

The Egyptian Labour Code of 1959 [1] lays down that where one employer entrusts another in the same area with the performance of any of his operations, the second employer must maintain complete equality of rights as between his own workers and those of the first employer, who is held jointly liable in this respect.

In the legislation of a number of Latin American countries, for example Colombia, Guatemala, Honduras and Venezuela [2], labour contracting practices are not specifically prohibited but the middleman or intermediary who engages the services of any person or persons to perform work on behalf of an employer is deemed to be a representative of the employer on whose behalf he is acting; the principal employer is therefore bound by the acts of any intermediaries he so employs and the workers engaged by them are, to all intents and purposes, the employees of the principal. Genuine independent contractors are defined as persons who contract to perform work on behalf of others, but who assume all the risks involved, carry out the work with their own resources, and enjoy technical and administrative freedom in its performance; they are considered to be employers and not middlemen. In some instances (e.g. Honduras), additional evidence is required that the contractors are independent employers, namely that the work they contract to carry out lies outside the normal activities of the persons on whose behalf it is performed. In Colombia, too, unless the work done is unrelated to the normal operations of the principal's business, the principal is jointly liable with the contractor " for the value of any wages, benefits or compensation to which the workers are entitled " and this responsibility extends to " obligations incurred by subcontractors vis-à-vis their workers, even where the contractor is not allowed to engage the services of subcontractors " [3]; and, in Venezuela, the principal employer is jointly respon-

[1] Law No. 91, dated 5 April 1959 (*LS*, 1959—U.A.R. 1), s. 53.

[2] Cf. *LS*, 1965—Col. 1, ss. 1 and 3; *LS*, 1961—Gua. 1, s. 5; *LS*, 1956—Hon. 1, ss. 11-12; and *LS*, 1945—Ven. 1, s. 3.

[3] Legislative Decree No. 2351, to make certain amendments to the Labour Code, dated 4 September 1965 (*LS*, 1965—Col. 1), s. 3.

sible with the contractor for the fulfilment of the duties imposed by the Labour Code.[1]

In Guatemala the employer is held jointly liable under the Labour Code " for actions performed by the middleman, both with respect to the middleman and with respect to the employees, for all legal purposes . . .".[2] In El Salvador the principal has a secondary responsibility as regards employment injuries suffered by workers employed by subcontractors.[3]

The legislation of Honduras [4] and Colombia [5] also provides that the contractor, who under the terms of the law is an intermediary and not an independent employer, must inform the workers of this fact at the time he engages them and indicate the name of the employer on whose account he is operating.

One of the most comprehensive pieces of legislation on contract labour to have been adopted recently is the Indian Act (No. 37 of 1970) which came into force in February 1971.[6] It applies to any establishment or contractor employing 20 or more contract workers, or fewer if the governments of the different states so decide, but not to establishments in which work of only an intermittent or casual nature is performed. After consulting the competent advisory board (see below), the appropriate authority may prohibit the employment of contract labour in any process, operation or other work in any establishment; the decision will take due account of the conditions of work and benefits provided for the contract workers and other relevant factors, such as whether the work concerned

[1] Labour Code (Amendments), dated 4 May 1945 (*LS*, 1945—Ven. 1), s. 3. In hydrocarbon, mining or construction undertakings, provided that the work done is closely connected with the normal operations of the undertaking, the employees of the contractor are entitled to the same conditions of employment and advantages as the employees of the principal. This provision may be extended to undertakings of other kinds by special resolutions of the Federal Executive (*LS*, 1947—Ven. 2), s. 3.

[2] Decree No. 1441, to promulgate the consolidated text of the Labour Code, as amended, dated 5 May 1961 (*LS*, 1961—Gua. 1), s. 5.

[3] Decree No. 241, to promulgate a Labour Code, dated 23 January 1963 (*LS*, 1963—Sal. 1), s. 269.

[4] Legislative Decree No. 224, to promulgate an Act respecting individual contracting for employment, dated 20 April 1956 (*LS*, 1956—Hon. 1), s. 11.

[5] *Código Sustantivo del Trabajo*, 15th edition (Bogotá, Editorial Voluntad Ltda., 1966), s. 35, para. 3.

[6] The Contract Labour (Regulation and Abolition) Act, 1970, assented to 5 September 1970 (*LS*, 1970—Ind. 1). For the background and an analysis of this Act, see P. J. Ovid: " Contract labour ", in *Labour Gazette* (Bombay), Nov. 1971, pp. 333-342.

A recent bulletin of the All-India Organisation of Employers (*AIOE Labour News* (New Delhi), July 1972, pp. 2-4) indicates that " the Labour Ministry is under growing pressure from workers' organisations to secure the abolition of the contract system of labour particularly in the mines in the public sector.... No minimum wage, security of service or any other basic facility is guaranteed.... According to the labour bureau's findings made some time ago, 73.9 per cent of labour in the iron ore mines is covered by the contract system which works to the benefit of only private contractors. The Ministry is inclined to totally abolish the system, if it could. Parliament adopted legislation in this direction two years ago.... Experience of the past two years, however, shows that the enactment ... mitigated the plight of contract labour only to a very limited extent."

is incidental to or necessary for the industry or business of the establishment, whether it is of a perennial nature, whether it is usually performed by regular workers and whether it is sufficient to employ considerable numbers of full-time workers. The Act provides for the registration of principal employers and the licensing of contractors (who may be required to make a deposit as security for the satisfactory fulfilment of such conditions as may be prescribed); the setting up of boards representing government, employers, contractors, employees and independent interests to advise the central or the state government, as the case may be, on matters arising out of the administration of the Act and to carry out such other functions as may be assigned to them; and the regulation of contract workers' conditions, including hours of work, wages and essential welfare and health amenities such as canteens and rest-rooms and drinking-water, toilet, washing and first-aid facilities. If these amenities are not provided by the contractor within the prescribed time limit, they have to be provided by the principal employer, who is entitled to deduct the cost from any amount payable to the contractor. The principal is required to nominate a representative who must be present when the contractor pays his workers' wages, and he must make good any wages due to these workers that the contractor fails to pay within the prescribed period; again, he is entitled to recover the amounts so paid from the contractor. Every principal employer and contractor is required to maintain registers and records giving particulars of the contract labour force employed, the nature of the work performed, the rates of wages paid, etc., while notices showing the hours of work, nature of duties involved, etc., must be displayed in workplaces where contract labour is employed. Inspectors may be appointed to enforce compliance with the terms of the Act: breaches are punishable by imprisonment of up to three months or fines or both. The government also has powers, in an "emergency" situation, to grant establishments or contractors a temporary exemption from all or any of the provisions of the Act.

Other examples of legislation could be given, but those cited above are sufficient to illustrate the main methods used to deal with the problems arising from the use of contract labour. The effective restriction of labour-only contracting is sought by limiting job-contracting to contractors or firms who undertake the work at their own risk, and provide tools, materials, equipment, supervision and technical control; and by prohibiting the contracting out of work which is inherent and necessary to the main operations of the undertaking and is usually performed by regular workers, or is of a continuous or long-term nature, or requires the employment of a large number of full-time workers. The protection of workers engaged by contractors is assured mainly by provisions laying on the principal employer a joint or residual responsibility as regards payment of wages, social security coverage, provision of welfare facilities, and an adequate level of working conditions for these workers, should

the contractor default or be negligent in these respects, or should he become insolvent. Administrative controls—registration of the principal and the contractor, the obligation to deposit copies of the contract with the authorities, post notices in workplaces, etc.—are also widely used as a means of ensuring that legal minima regarding conditions of work and other factors are respected and that workers know where to turn for redress in cases of abuse.

The effect of these laws and regulations is thus to encourage employers to deal only with bona fide independent contractors and only for work of an exceptional, short-term or auxiliary nature; to safeguard the wages and working conditions of contract workers employed alongside permanent directly employed workers; and at the same time to protect the regular workforce against unfair competition from contract labour or anti-union practices and to facilitate proper supervision by the authorities.

It is probable that such legislation has gone a long way towards bringing contract labour practices under control, but it is difficult to estimate its full impact in the absence of well-documented studies of these practices. As has been noted, the complexities of the triangular employment relationship have sometimes given rise to difficulties of interpretation in the application of the law, and there appears to be a growing recognition of the need to establish specific statutes or regulations governing the employment of workers engaged through intermediaries so that their position may be clarified and their protection assured.

Non-statutory arrangements and other practical measures

Restrictions on the use of contract labour and/or supervision of the conditions in which it is employed have also been achieved through various contractual arrangements and practical measures.

In some instances, the terms of the contract between the contractor and the principal employer spell out the conditions of work or employment of the workers carrying out the operations in question. Provisions may thus be included relating to their safety and health, the responsibility of the contractor for the payment of wages and for liability insurance in respect of employment injuries, and the observance of relevant legal standards. In Argentina, for instance, contracts with some large petroleum undertakings for the daily supply of unskilled manual labour specify that legal standards relating to hours of work and minimum pay must be adhered to. But on the whole, protection under the terms of the contract has so far been the exception rather than the rule in the private sector.

In industries where there is a high degree of trade union organisation, collective bargaining has been used as a means of controlling the use of contract labour and securing minimum standards of working and

living conditions for contract workers. A number of examples of industry-wide and plant-level agreements dealing with this issue may be mentioned. In the United Kingdom the National Joint Council for the Building Industry [1] adopted in 1964 an addition to its National Working Rule Agreements, covering the employment of labour through subcontractors. The new Rule was agreed to by the majority on both sides of the industry but was rejected by one of the major building unions, the Amalgamated Union of Building Trade Workers (AUBTW), which was opposed to the continuance of labour-only subcontracting under any regulations. The text of the Rule is as follows:

(1) That the main contractor shall require the labour-only subcontractor to observe and the subcontractor shall observe the Working Rule Agreement and the decisions of the National Joint Council.

(2) That in the event of a default by the labour-only subcontractor, the main contractor shall accept responsibility for—

(a) wages at the standard rate due (but not paid) to the subcontractor's operatives in respect of time worked on the site during the pay week immediately prior to the default, plus any time worked in the pay week in which the default occurs; and

(b) annual and public holidays credit stamps which should have, but have not, been affixed to the cards of the subcontractor's operatives during the period of their employment on the site.

(3) The main contractor shall satisfy himself that the operatives employed by the labour-only subcontractor are covered by a current employer's liability insurance policy.

(4) The labour-only subcontractor shall afford the same facilities for access of trade union officers as are afforded by the main contractor.[2]

Also in the United Kingdom, the draughtsmen's union has succeeded in negotiating an agreement with the English Electric Co. Ltd., under which the use of contract draughtsmen is to be confined to a given proportion of employees and no self-employed persons are to be used at all. The union has also been pressing for agreements under which the contract firms would deal only with its members.[3]

In Sweden a trilateral agreement was concluded in 1964 (revised in 1966) between the National Labour Market Board—the body responsible for implementing the Government's employment policies—and the natio-

[1] This body fixes national rates of pay and conditions for labourers and most of the main crafts in building contracting firms.

[2] This rule appears nevertheless to have been largely ineffective in stamping out the practices at which it is aimed, probably because of inadequate sanctions against employers who disregard it and also because of the difficulty of checking the real employment status of all the workers on any particular site (see *Report of the Committee of Inquiry under Professor E. H. Phelps Brown into certain matters concerning labour in building and civil engineering* (London, HM Stationery Office, 1968), Cmnd. 3714, pp. 113-114).

[3] *DATA News*, 20 May 1966, quoted by G. de N. Clark: "Industrial law and the labour-only sub-contract", in *Modern Law Review* (London), Jan. 1967, p. 20.

nal organisations of employers and workers in the shipbuilding industry. This agreement recommended the observance of certain rules covering the activities of outside enterprises in the shipyards, e.g. that contractors should have workshops of their own and supply their own foremen. However, no doubt because these rules have not had binding force, they do not appear to have been strictly observed. The trade unions in this industry, although opposed to labour contracting and endeavouring to eliminate it, concluded agreements with certain of the middlemen in order to secure for the latter's employees the same material conditions as those enjoyed by the regular workers in the yards.[1] More recently, legislative action has been taken to reinforce the application of the Employment Services Act with a view to eliminating such practices as the hiring out of labour in the shipyards.[2]

An agreement concluded between the Mexican Oil Company and the petroleum workers' union STPRM in 1969 reiterates the provisions of the Labour Code to the effect that all work pertaining to the essential operations of the industry must be performed by permanent workers, and that contract labour may be used only for short-term work or, on a temporary basis, to replace permanent workers who are ill or absent. In Venezuela, under an agreement between the Creole Company and the trade union representing its workers, this petroleum company undertakes, inter alia, to be in all cases a "joint guarantor and principal payer" in respect of any legal or contractual obligations towards the contractors' employees throughout the duration of the contract work. This agreement also provides that workers employed by contractors shall be entitled to the same conditions of employment and the same statutory and contractual benefits as workers directly employed by the undertaking in the area in which the work is carried out. It is furthermore specified that contractors must provide workers with a payslip indicating their job classification and other data affecting the calculation of their wages.[3] Finally, contractors who undertake work for the company are required to give preference in hiring labour for the job to applicants whose names appear on lists submitted by the local trade union.[4] This agreement also guarantees to contract workers the right of representation by trade unions, specifying that individual contractors must accept a given number of trade union delegates per project according to the number of unionised

[1] Tore Sigeman: *Contract labour in Sweden*, offprint from *Annales Academiae Regiae Scientiarum Upsaliensis* (Stockholm, Almqvist & Wiksell, 1970), pp. 45-50.

[2] Act of 17 December 1970 to amend the Employment Services Act of 1935 (*LS*, 1935—Swe. 1; 1942—Swe. 3). The new Act, which came into force on 1 July 1971, introduced stiffer penalties for private employment agencies and also made it an offence for principals to have recourse to their services.

[3] ILO: *Social problems of contract, sub-contract and casual labour in the petroleum industry*, Report II, Petroleum Committee, Eighth Session, Geneva, 1973 (Geneva, 1972), pp. 29 and 31.

[4] Ibid., p. 18.

workers. Provision is made for the checking off of union dues by the contractor subject to the workers' consent.[1]

In some instances, workers employed as contract labour, especially skilled workers, are covered by collective agreements fixing conditions of work and terms of employment which are negotiated at the national level for the industry as a whole or for the trades or occupations to which they belong.

Collective bargaining thus seems to offer a flexible means of regulating many of the aspects of labour contracting which are of concern to organised workers, but it is a method that is, of course, inoperable in industries where there is a low degree of trade union organisation. All things considered, therefore, regulation through collective agreements seems to present advantages which may usefully complement, but cannot always replace, legislative control.

Various practical means have also been tried in order to eliminate contract labour practices or to minimise their negative effects. In Sweden, for instance, boycotts of building sites have long been used by the unions to enforce payment of wages in cases where the employer has defaulted, a lawful means of coercion that can be used against the principal even if, from the legal point of view, the workers concerned were actually employed by a middleman.[2] Before the adoption of the Act of 1970 the shipyards, which were anxious to rid themselves of the dependence on middlemen, were discussing plans to co-operate for this purpose by lending one another the necessary manpower when the need arose.[3]

Schemes for the decasualisation of dock labour, which have been introduced in a number of countries, may also be mentioned, since they have been instrumental in abolishing labour contracting practices. In the Indian port of Cochin, for example, the employment of stevedore workers has been brought under official control. These workers were formerly engaged by contractors who supplied gangs to the steamer agents; at a later stage the distribution of available work was taken over in practice by the trade unions; and since 1962, the employment of these workers has been regulated by the Dock Labour Board—composed of representatives of the central Government, the dockworkers and the stevedore employers and shipping companies—which pools and distributes available work among all registered stevedore workers.[4]

Some interesting regulatory measures have also been taken in the plantation sector. In Indonesia, for instance, labour contracting was commonly used in colonial times to bring labour from Java, where there

[1] ILO: *Social problems of contract, sub-contract and casual labour . . .*, p. 34.

[2] Sigeman, op. cit., p. 35.

[3] Ibid., p. 50.

[4] Cf. T. Pankaj: " A study of dock labour at the Port of Cochin ", in *Asian Economic Review* (Hyderabad), Aug. 1968, pp. 404-406 and 418-419.

was a surplus of workers, to the plantations in Sumatra, where labour was in short supply; but the middlemen who formerly handled this job were superseded, first by an association of estate managers and, since 1958, by a public body which looks after the recruitment and transportation of these workers.[1] In Turkey, where migrant farm labour recruited through middlemen used to be extensively employed in the fruit-growing and cotton-producing areas, this recruitment function has gradually been taken over by the official employment service, which has established rest centres and placement offices along the migration routes.[2]

As already pointed out, the strengthening of public employment services can play a key role in discouraging and eliminating labour contracting. One original method which might prove useful in many developing countries is the organisation of official mobile recruitment units. In El Salvador, for instance, the employment service, having first inquired into the manpower needs of the estates, sends out jeeps fitted with loudspeakers to contact workers in search of employment as they gather on the main square or after church. This initiative, in addition to the relatively short distances involved, seems to explain why labour contracting is practically unknown in the plantation sector of this country. The role of the labour inspectorate or similar bodies is also of vital importance for the eradication of abusive practices and the protection of the workers concerned. It can be enhanced by the types of measure which, as mentioned earlier, are provided for in the legislation of certain African States.

Finally, it may be mentioned that public policy in regard to the use of contract labour by government agencies may also play an important role in ensuring the protection of these workers, and in eliminating abusive labour contracting practices.[3]

The ILO and labour contracting

A number of international labour Conventions and Recommendations contain provisions which are designed to mitigate or put a stop to

[1] Everett D. Hawkins: " Indonesia ", in Walter Galenson (ed.): *Labor in developing economies* (Berkeley and Los Angeles, University of California Press, 1963), pp. 114-115.

[2] Sumner M. Rosen: " Turkey ", ibid., p. 277.

[3] In this connection see Trinidad and Tobago: *Report of the Commission of Enquiry into the consequences for workers, particularly those employed by small contractors, resulting from the acute competition for contracts; and other undesirable features of the system of contracting out work* (Port of Spain, 24 Oct. 1972). This report recommends, inter alia, that the rules governing public contracts be amended so that it should not be mandatory to accept the lowest tender offered; and that provision should be made " to the effect that all labour-content contracts awarded by Government must carry stipulations in respect of the employment of labour and for the purpose of ensuring against the exploitation of labour by any contractor to whom an award is made " (pp. 86-87). The report further recommends that the practice of labour-supply-only contracts be totally outlawed.

abuses similar to those described above.[1] While there is no instrument to date which deals comprehensively with labour contracting as such, the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), applies to individuals and organisations engaging in labour contracting or recruiting with a view to profit. The Convention requires that ratifying States accept the obligation either to prohibit such activities or to subject those engaging in them to supervision and control.[2]

Several ILO Industrial Committees have expressed their concern about problems arising in connection with contract labour. At its Fifth Session in 1955-56 the Petroleum Committee unanimously adopted a resolution concerning conditions of employment of contract labour in the petroleum industry. The terms of this resolution [3] summarise various forms of action which should be taken by public authorities and employers to regulate the conditions of recruitment and employment of contract workers and to ensure that they enjoy fair standards of wages, living conditions and welfare, as well as reasonable security of employment. At its Eighth Session in April 1973 the Petroleum Committee adopted conclusions concerning social problems of contract, subcontract and casual labour in the petroleum industry, in which further suggestions were made concerning the protection of these workers. These conclusions indicated, inter alia, that special attention should be paid to labour contracting, including the question of licensing of contractors and other measures for control or even abolition of the practice. They pointed to the need to guarantee the trade union rights of contract and casual workers and to ensure their protection against unjustified dismissal. They also mentioned the need for measures to confine the employment of temporary or casual workers supplied through labour contractors to meeting temporary or unforeseeable requirements for personnel.

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[1] In addition to the instruments already referred to in connection with recruitment and employment services, the following deal with contract labour practices in various ways or contain provisions of special interest to contract workers: the Contracts of Employment (Indigenous Workers) Convention and Recommendation, 1939 (Nos. 64 and 58 respectively); the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65); the Labour Inspection Convention, 1947 (No. 81); the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86); the Labour Clauses (Public Contracts) Convention, 1949 (No. 94); the Protection of Wages Convention, 1949 (No. 95); the Plantations Convention and Recommendation, 1958 (Nos. 110); the Labour Inspection in Agriculture Convention and Recommendation, 1969 (Nos. 129 and 133 respectively); the Minimum Wage Fixing Convention and Recommendation, 1970 (Nos. 131 and 135 respectively); and the Holidays with Pay Convention (Revised), 1970 (No. 132).

As regards migrant workers special provisions concerning their recruitment, introduction and placement in the countries of immigration are contained in the Migration for Employment Convention (Revised), 1949 (No. 97), Annexes I and II. Certain of the abuses referred to will be examined by the International Labour Conference at its 59th Session in June 1974 (see ILO: *Migrant workers*, Report VII (1) (Geneva, 1973)).

[2] Convention No. 96 is in force for 31 countries. The earlier Fee-Charging Employment Agencies Convention, 1933 (No. 34)—which provides simply for the abolition of such agencies (including labour contractors)—remains binding on 5 countries.

[3] For the text see *Official Bulletin* (Geneva, ILO), Vol. XXXIX, 1956, No. 3, pp. 77-78.

Finally they called for appropriate training for regular workers so as to enable them to fill posts becoming vacant and thus avoid the need for recourse to the use of temporary or contract labour.

In 1956 the Building, Civil Engineering and Public Works Committee adopted at its Fifth Session a resolution [1] asking the ILO to undertake on-the-spot studies in several less industrialised countries on conditions of employment of workers employed by construction contractors who supply labour only. The Inland Transport Committee recommended in a resolution concerning methods of improving organisation of work and output in ports, adopted in 1957 at its Sixth Session, that "recruitment through labour contractors, where still practised, should be eliminated ".[2] The Committee on Work on Plantations, at its Sixth Session in 1971, expressed the wish to have the problems of casual and contract labour on plantations included in the agenda of its next session.

It is also worth mentioning, in view of the fact that migrant workers are often engaged through labour contractors, that at its 56th Session in 1971 the International Labour Conference adopted a resolution [3] concerning ILO action for promoting the equality of migrant workers in all social and labour matters, and that the problem of migrant workers will be on the agenda of the Conference in 1974.

Conclusion

The abuses connected with labour contracting are still a matter of concern in many quarters, in both industrialised and developing countries and at the international level as well. Labour contracting is a complex and elusive phenomenon, springing up repeatedly wherever an unbalanced employment market or other factors encourage the intervention of third parties in the procurement of labour. The employment relationships involved often elude precise definition and do not fit easily within the framework of social and labour legislation designed for workers' protection. The frontiers between different types of contract labour practices are difficult to draw clearly; moreover, these practices are intertwined with many other aspects of labour problems concerning recruitment and placement services, migrant workers, industrial home-workers, casual labour, and so forth. The pervasiveness of the phenomenon makes it difficult to deal with separately, in isolation, although this is precisely what the legislation of a number of countries has attempted to do, particularly in recent years.

The problem for legislators has been to formulate provisions which will put an end to the exploitation of workers by intermediaries and

[1] For the text see *Official Bulletin*, Vol. XXXIX, No. 7, p. 427.

[2] Ibid., Vol. XL, No. 3, 1957, p. 193, para. 30 *(b)*.

[3] For the text see ibid., Vol. LIV, No. 3, 1971, pp. 265-267.

guarantee contract labour a level of protection comparable with that achieved for regular, directly employed workers, without losing the advantages to the economy which some contract labour systems represent. In many developing countries, for example, small jobbers and subcontractors are a source of considerable employment.[1] Legislation has therefore been aimed only at the abusive types of labour contracting and care has been taken to define the circumstances in which it applies as precisely as possible.

Regulatory measures have also been adopted on the initiative of the parties concerned through various non-statutory arrangements: these include collective bargaining, joint action on the part of workers' and employers' organisations, and tripartite agreements involving the public authorities. Employers who deal with labour contractors have an interest in avoiding costly work accidents and the labour unrest that might arise from excessive disparities in wages and working conditions between contract labour and regular employees; hence the guarantee required of contractors that they will observe statutory labour provisions and safety precautions. Organised regular workers naturally wish to defend their job security and negotiated rights from the competition of contract labour (whether the object of the contract is the provision of labour or of work or services), and the trade union movement is concerned to protect workers from the abusive practices to which some labour contractors resort.

Despite this convergence of interests in regulating such practices, it would appear that a great deal remains to be done towards the achievement of effective controls. The whole issue of labour contracting —its nature, extent, origins and effects—as well as the practical impact of the various regulatory mechanisms devised, offers a fruitful field for further research. But it is already clear even from the fragmentary information now available that labour contracting, wherever it exists, tends to perpetuate social evils and injustices with which the poorer and more inarticulate among the working population have been familiar for many centuries.

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[1] Several recent ILO studies have recommended the promotion of job contracting (the contracting out of work) in developing countries. See, for example, *Matching employment opportunities and expectations. A programme of action for Ceylon* (Geneva, 1971); *Employment, incomes and equality. A strategy for increasing productive employment in Kenya* (Geneva, 1972); and Susumu Watanabe: "Subcontracting, industrialisation and employment creation", in *International Labour Review*, July-Aug. 1971, pp. 51-76.