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CONVENTION (NO. 176) CONCERNING SAFETY AND HEALTH IN MINES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION (NO. 176) CONCERNING SAFETY AND HEALTH IN MINES, ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE AT ITS 82ND SESSION IN GENEVA ON JUNE 22, 1995

SEPTEMBER 9, 1999.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
69–118 WASHINGTON : 1999

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 9, 1999.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification of the Convention (No. 176) Concerning Safety and Health in Mines, adopted by the International Labor Conference at its 82nd Session in Geneva on June 22, 1995, I transmit herewith a certified copy of that Convention.

The report of the Department of State, with a letter from the Secretary of Labor, concerning the Convention is enclosed.

As explained more fully in the enclosed letter from the Secretary of Labor, current United States law and practice fully satisfies the requirements of Convention No. 176. Ratification of this Convention, therefore, would not require the United States to alter in any way its law or practice in this field.

Ratification of additional ILO conventions will enhance the ability of the United States to take other governments to task for failing to comply with the ILO instruments they have ratified. I recommend that the Senate give its advice and consent to the ratification of ILO Convention No. 176.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 6, 1999.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, a certified copy of the Convention (No. 176) Concerning Safety and Health in Mines, adopted by the International Labor Conference at its 82nd Session in Geneva on June 22, 1995.

In general, the Convention obligates ratifying countries to formulate, carry out and periodically review a coherent policy on safety and health in mines. The Secretary of Labor, in her enclosed letter of June 15, 1999, provides additional details concerning the Convention. As she notes, ratification of Convention No. 176 will be an important step in terms of U.S. participation in the ILO. All interested departments and agencies concur in that view.

I am pleased to join with the Secretary of Labor in recommending that the Convention be transmitted to the Senate for advice and consent to ratification, a step which is consistent with our policy of support for and active participation in the work of the ILO.

Respectfully submitted,

STROBE TALBOT.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, June 15, 1999.

Hon. MADELEINE ALBRIGHT,
Secretary of State,
Department of State, Washington, DC.

DEAR SECRETARY ALBRIGHT: I am writing to request that you submit to the President, for transmittal to the Senate with a request for advice and consent to U.S. ratification, Convention No. 176 concerning Safety and Health in Mines, adopted by the International Labor Conference at its 82nd Session on June 22, 1995.

Convention No. 176 obligates ratifying states, in consultation with employers' and workers' organizations, to formulate, carry out and periodically review a coherent policy on safety and health in mines, and to develop national laws and regulations to ensure implementation of the Convention's provisions. Steps to be taken include supervision and inspection of mines and maintenance of procedures for reporting and investigating accidents and occupational diseases. The Convention applies to all mines, both surface and underground sites. In regard to preventive and protective measures at the mine, the instrument sets forth the responsibilities of employers and the rights and duties of workers and their representatives.

As Chairman of the President's Committee on the ILO, I have been presented with the report of our Tripartite Advisory Panel on International Labor Standards (TAPILS) with the Panel's conclusions that there are no legal impediments to U.S. ratification of Convention No. 176.

TAPILS undertook an extensive review of Convention No. 176 which included a detailed examination of the precise meaning and obligations of the Convention and of how U.S. law and practice comport with its provisions. A tripartite working group from the Panel also met and corresponded with experts from the International Labor Office in Geneva, Switzerland, to ensure that the ILO shared TAPILS' assessment that the U.S. is in full compliance with the Convention.

Having reviewed TAPILS' legal findings, the President's Committee has unanimously agreed to recommend that the President transmit Convention No. 176 to the Senate with a request for advice and consent to ratification.

I am enclosing the TAPILS report along with a detailed statement of how U.S. law and practice comport with the Convention. The law and practice statement was also prepared under TAPILS' guidance.

I and the other members of the President's Committee believe that ratification of Convention No. 176 will be an important step

in terms of U.S. participation in the ILO. I hope that Senate consideration can be requested as expeditiously as possible.

Sincerely,

ALEXIS M. HERMAN.

Enclosures.

International Labour Conference
Conférence internationale du Travail

CONVENTION 176

CONVENTION CONCERNING SAFETY AND HEALTH IN MINES
ADOPTED BY THE CONFERENCE AT ITS
EIGHTY-SECOND SESSION, GENEVA, 22 JUNE 1995

CONVENTION 176

CONVENTION CONCERNANT LA SÉCURITÉ ET LA SANTÉ DANS LES MINES
ADOPTÉE PAR LA CONFÉRENCE À SA
QUATRE-VINGT-DEUXIÈME SESSION, GENÈVE, 22 JUIN 1995

AUTHENTIC TEXT
TEXTE AUTHENTIQUE

Convention 176

CONVENTION CONCERNING SAFETY AND HEALTH IN MINES

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-Second Session on 6 June 1995, and

Noting the relevant International Labour Conventions and Recommendations and, in particular, the Abolition of Forced Labour Convention, 1957; the Radiation Protection Convention and Recommendation, 1960; the Guarding of Machinery Convention and Recommendation, 1963; the Employment Injury Benefits Convention and Recommendation, 1964; the Minimum Age (Underground Work) Convention and Recommendation, 1965; the Medical Examination of Young Persons (Underground Work) Convention, 1965; the Working Environment (Air Pollution, Noise and Vibration) Convention and Recommendation, 1977; the Occupational Safety and Health Convention and Recommendation, 1981; the Occupational Health Services Convention and Recommendation, 1985; the Asbestos Convention and Recommendation, 1986; the Safety and Health in Construction Convention and Recommendation, 1988; the Chemicals Convention and Recommendation, 1990; and the Prevention of Major Industrial Accidents Convention and Recommendation, 1993, and

Considering that workers have a need for, and a right to, information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry, and

Recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations, and

Having regard to the need for cooperation between the International Labour Organization, the World Health Organization, the International Atomic Energy Agency and other relevant institutions and noting the relevant instruments, codes of practice, codes and guidelines issued by these organizations, and

Having decided upon the adoption of certain proposals with regard to safety and health in mines, which is the fourth item on the agenda of the session, and

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

adopts this twenty-second day of June of the year one thousand nine hundred and ninety-five the following Convention, which may be cited as the Safety and Health in Mines Convention, 1995:

PART I. DEFINITIONS

Article 1

1. For the purpose of this Convention, the term "mine" covers –

(a) surface or underground sites where the following activities, in particular, take place:
  (i) exploration for minerals, excluding oil and gas, that involves the mechanical disturbance of the ground;
  (ii) extraction of minerals, excluding oil and gas;
  (iii) preparation, including crushing, grinding, concentration or washing of the extracted material; and

(b) all machinery, equipment, appliances, plant, buildings and civil engineering structures used in conjunction with the activities referred to in (a) above.

CONVENTION CONCERNANT LA SÉCURITÉ ET LA SANTÉ DANS LES MINES

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 6 juin 1995 en sa quatre-vingt-deuxième session;

Notant les conventions et recommandations internationales du travail pertinentes, en particulier la convention sur l'abolition du travail forcé, 1957; la convention et la recommandation sur la protection contre les radiations, 1960; la convention et la recommandation sur la protection des machines, 1963; la convention et la recommandation concernant les prestations en cas d'accidents du travail et de maladies professionnelles, 1964; la convention et la recommandation sur l'âge minimum (travaux souterrains), 1965; la convention sur l'examen médical des adolescents (travaux souterrains), 1965; la convention et la recommandation sur le milieu de travail (pollution de l'air, bruit et vibrations), 1977; la convention et la recommandation sur la sécurité et la santé des travailleurs, 1981; la convention et la recommandation sur les services de santé au travail, 1985; la convention et la recommandation sur l'amiante, 1986; la convention et la recommandation sur la sécurité et la santé dans la construction, 1988; la convention et la recommandation sur les produits chimiques, 1990, ainsi que la convention et la recommandation sur la prévention des accidents industriels majeurs, 1993;

Considérant le besoin et le droit que les travailleurs ont d'être informés, formés et consultés de manière effective, ainsi que de participer à la préparation et la mise en œuvre de mesures relatives à la sécurité et à la santé au sujet des dangers et des risques auxquels ils sont exposés dans l'industrie minière;

Reconnaissant qu'il est souhaitable de prévenir tout accident mortel, lésion ou atteinte à la santé que pourraient subir les travailleurs ou la population, ainsi que les dommages à l'environnement, qui pourraient résulter de l'exploitation minière;

Tenant compte de la nécessité d'une coopération entre l'Organisation internationale du Travail, l'Organisation mondiale de la santé, l'Agence internationale de l'énergie atomique et les autres institutions compétentes, et notant les instruments, recueils de directives pratiques, codes et directives pertinents publiés par ces organisations;

Après avoir décidé d'adopter diverses propositions relatives à la sécurité et à la santé dans les mines, question qui constitue le quatrième point de l'ordre du jour de la session;

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

adopte, ce vingt-deuxième jour de juin mil neuf cent quatre-vingt quinze, la convention ci-après, qui sera dénommée Convention sur la sécurité et la santé dans les mines, 1995.

PARTIE I. DÉFINITIONS

Article 1

1. Aux fins de la présente convention, le terme «mine» comprend:

a) tout site à ciel ouvert ou souterrain où se déroulent notamment les activités suivantes:

i) l'exploration de minéraux, à l'exception du pétrole et du gaz, qui implique une altération mécanique du terrain;

ii) l'extraction de minéraux, à l'exception du pétrole et du gaz;

iii) la préparation des matériaux extraits, notamment le concassage, le broyage, la concentration ou le lavage;

b) l'ensemble des machines, équipements, accessoires, installations, bâtiments et structures de génie civil utilisés en rapport avec les activités visées à l'alinéa *a)* ci-dessus.

2. For the purpose of this Convention, the term "employer" means any physical or legal person who employs one or more workers in a mine and, as the context requires, the operator, the principal contractor, contractor or subcontractor.

PART II. SCOPE AND MEANS OF APPLICATION

Article 2

1. This Convention applies to all mines.

2. After consultations with the most representative organizations of employers and workers concerned, the competent authority of a Member which ratifies the Convention:

(a) may exclude certain categories of mines from the application of the Convention, or certain provisions thereof, if the overall protection afforded at these mines under national law and practice is not inferior to that which would result from the full application of the provisions of the Convention;

(b) shall, in the case of exclusion of certain categories of mines pursuant to clause (a) above, make plans for progressively covering all mines.

3. A Member which ratifies the Convention and avails itself of the possibility afforded in paragraph 2(a) above shall indicate, in its reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization, any particular category of mines thus excluded and the reasons for the exclusion.

Article 3

In the light of national conditions and practice and after consultations with the most representative organizations of employers and workers concerned, the Member shall formulate, carry out and periodically review a coherent policy on safety and health in mines, particularly with regard to the measures to give effect to the provisions of the Convention.

Article 4

1. The measures for ensuring application of the Convention shall be prescribed by national laws and regulations.

2. Where appropriate, these national laws and regulations shall be supplemented by:

(a) technical standards, guidelines or codes of practice; or

(b) other means of application consistent with national practice,

as identified by the competent authority.

Article 5

1. National laws and regulations pursuant to Article 4, paragraph 1, shall designate the competent authority that is to monitor and regulate the various aspects of safety and health in mines.

2. Such national laws and regulations shall provide for:

(a) the supervision of safety and health in mines;

(b) the inspection of mines by inspectors designated for the purpose by the competent authority;

(c) the procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, each as defined by national laws or regulations;

(d) the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, each as defined by national laws or regulations;

2. Aux fins de la présente convention, le terme «employeur» désigne toute personne physique ou morale qui emploie un ou plusieurs travailleurs dans une mine, ainsi que, si le contexte l'implique, l'exploitant, l'entrepreneur principal, l'entrepreneur ou le sous-traitant.

Partie II. Champ et modalités d'application

Article 2

1. La présente convention s'applique à toutes les mines.

2. Après consultation avec les organisations les plus représentatives d'employeurs et de travailleurs intéressées, l'autorité compétente d'un Membre qui ratifie la convention,

a) pourra exclure certaines catégories de mines de l'application de la convention ou de certaines de ses dispositions si, dans son ensemble, la protection accordée en vertu de la législation et de la pratique nationales n'y est pas inférieure à celle qui résulterait de l'application intégrale des dispositions de la convention;

b) devra, au cas où certaines catégories de mines font l'objet d'exclusions en vertu de l'alinéa *a)* ci-dessus, établir des plans en vue de couvrir progressivement l'ensemble des mines.

3. Tout Membre qui ratifie la présente convention et se prévaut de la possibilité offerte au paragraphe 2 *a)* ci-dessus devra indiquer, dans les rapports sur l'application de la convention présentés, en vertu de l'article 22 de la Constitution de l'Organisation internationale du Travail, toute catégorie particulière de mines qui a fait l'objet d'une exclusion et les raisons de cette exclusion.

Article 3

Le Membre devra, en tenant compte des conditions et de la pratique nationales, et après consultation avec les organisations les plus représentatives d'employeurs et de travailleurs intéressées, formuler et mettre en œuvre une politique cohérente en matière de sécurité et de santé dans les mines et la revoir périodiquement, notamment en ce qui concerne les mesures donnant effet aux dispositions de la convention.

Article 4

1. Les mesures visant à assurer l'application de la convention devront être prescrites par la législation nationale.

2. Lorsqu'il y a lieu, cette législation devra être complétée par:

a) des normes techniques, des principes directeurs, des recueils de directives pratiques; ou

b) par d'autres moyens de mise en œuvre conformes à la pratique nationale, qui seront identifiés par l'autorité compétente.

Article 5

1. La législation nationale visée à l'article 4, paragraphe 1, devra désigner l'autorité appelée à surveiller et réglementer les divers aspects de la sécurité et de la santé dans les mines.

2. Cette législation devra prévoir:

a) la surveillance de la sécurité et de la santé dans les mines;

b) l'inspection des mines par des inspecteurs désignés à cet effet par l'autorité compétente;

c) les procédures de notification et d'enquête dans les cas d'accidents mortels ou graves ainsi que de catastrophes minières et d'incidents dangereux tels que définis par ladite législation;

d) l'établissement et la publication des statistiques sur les cas d'accidents, de maladies professionnelles et d'incidents dangereux tels que définis par ladite législation;

(e) the power of the competent authority to suspend or restrict mining activities on safety and health grounds until the condition giving rise to the suspension or restriction has been corrected; and

(f) the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace.

3. Such national laws and regulations shall provide that the manufacture, storage, transport and use of explosives and initiating devices at the mine shall be carried out by or under the direct supervision of competent and authorized persons.

4. Such national laws and regulations shall specify:

(a) requirements relating to mine rescue, first aid and appropriate medical facilities;

(b) an obligation to provide and maintain adequate self-rescue respiratory devices for workers in underground coal mines and, where necessary, in other underground mines;

(c) protective measures to secure abandoned mine workings so as to eliminate or minimize risks to safety and health;

(d) requirements for the safe storage, transportation and disposal of hazardous substances used in the mining process and waste produced at the mine; and

(e) where appropriate, an obligation to supply sufficient sanitary conveniences and facilities to wash, change and eat, and to maintain them in hygienic condition.

5. Such national laws and regulations shall provide that the employer in charge of the mine shall ensure that appropriate plans of workings are prepared before the start of operation and, in the event of any significant modification, that such plans are brought up to date periodically and kept available at the mine site.

PART III. PREVENTIVE AND PROTECTIVE MEASURES AT THE MINE

A. RESPONSIBILITIES OF EMPLOYERS

Article 6

In taking preventive and protective measures under this Part of the Convention, the employer shall assess the risk and deal with it in the following order of priority:

(a) eliminate the risk;

(b) control the risk at source;

(c) minimize the risk by means that include the design of safe work systems; and

(d) in so far as the risk remains, provide for the use of personal protective equipment,

having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

Article 7

Employers shall take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular:

(a) ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment;

(b) ensure that the mine is commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned to them without endangering their safety and health or that of other persons;

e) le pouvoir de l'autorité compétente de suspendre ou de restreindre, pour des motifs de sécurité et de santé, les activités minières jusqu'à ce que les conditions à l'origine de la suspension ou de la restriction soient corrigées;

f) la mise en place de procédures efficaces en vue de donner effet aux droits des travailleurs et de leurs représentants d'être consultés au sujet des questions et de participer aux mesures relatives à la sécurité et à la santé sur le lieu de travail.

3. Cette législation nationale devra prévoir que la fabrication, l'entreposage, le transport et l'utilisation d'explosifs et de détonateurs à la mine devront être effectués par des personnes compétentes et autorisées ou sous leur surveillance directe.

4. Cette législation devra établir:

a) les prescriptions à suivre en matière de sauvetage dans les mines, de premiers soins ainsi que les services médicaux appropriés;

b) l'obligation de fournir des appareils respiratoires de sauvetage individuel adéquats aux travailleurs dans les mines souterraines de charbon et, s'il y a lieu, dans d'autres mines souterraines ainsi que d'entretenir ces appareils;

c) les mesures de protection à appliquer aux travaux miniers abandonnés en vue d'éliminer ou de réduire au minimum les risques pour la sécurité et la santé;

d) les prescriptions visant à assurer, dans des conditions de sécurité satisfaisantes, le stockage, le transport et l'élimination des substances dangereuses utilisées dans les travaux miniers ainsi que les résidus produits à la mine;

e) le cas échéant, l'obligation de fournir et maintenir dans un état d'hygiène satisfaisant un nombre suffisant d'équipements sanitaires et d'installations pour se laver, se changer et se nourrir.

5. Cette législation nationale devra prévoir que l'employeur responsable de la mine doit veiller à l'élaboration de plans appropriés des travaux miniers avant le début des opérations ainsi que lors de toute modification significative, et à la mise à jour périodique de ces plans qui devront être tenus à disposition sur le site de la mine.

Partie III. Mesures de prévention et de protection dans la mine

A. Responsabilités des employeurs

Article 6

En prenant les mesures de prévention et de protection prévues par cette partie de la convention, l'employeur devra évaluer les risques et les traiter selon l'ordre de priorité suivant:

a) éliminer ces risques;

b) les contrôler à la source;

c) les réduire au minimum par divers moyens dont l'élaboration de méthodes de travail sûres;

d) dans la mesure où ces risques subsistent, prévoir l'utilisation d'équipements de protection individuelle,

eu égard à ce qui est raisonnable, praticable et réalisable, ainsi qu'à ce qui est considéré comme de bonne pratique et conforme à la diligence requise.

Article 7

L'employeur devra être tenu de prendre toutes les mesures nécessaires pour éliminer ou réduire au minimum les risques pour la sécurité et la santé que présentent les mines sous son autorité, et en particulier:

a) veiller à ce que la mine soit conçue, construite et pourvue d'un équipement électrique, mécanique et autre, y compris un système de communication, de manière que les conditions nécessaires à la sécurité de son exploitation ainsi qu'un milieu de travail salubre soient assurés;

b) veiller à ce que la mine soit mise en service, exploitée, entretenue et déclassée de façon telle que les travailleurs puissent exécuter les tâches qui leur sont assignées sans danger pour leur sécurité et leur santé ou celles d'autres personnes;

(c) take steps to maintain the stability of the ground in areas to which persons have access in the context of their work;

(d) whenever practicable, provide, from every underground workplace, two exits, each of which is connected to separate means of egress to the surface;

(e) ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed and to assess their level of exposure;

(f) ensure adequate ventilation for all underground workings to which access is permitted;

(g) in respect of zones susceptible to particular hazards, draw up and implement an operating plan and procedures to ensure a safe system of work and the protection of workers;

(h) take measures and precautions appropriate to the nature of a mine operation to prevent, detect and combat the start and spread of fires and explosions; and

(i) ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.

Article 8

The employer shall prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters.

Article 9

Where workers are exposed to physical, chemical or biological hazards, the employer shall:

(a) inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved and relevant preventive and protective measures;

(b) take appropriate measures to eliminate or minimize the risks resulting from exposure to those hazards;

(c) where adequate protection against risk of accident or injury to health including exposure to adverse conditions cannot be ensured by other means, provide and maintain at no cost to the worker suitable protective equipment, clothing as necessary and other facilities defined by national laws or regulations; and

(d) provide workers who have suffered from an injury or illness at the workplace with first aid, appropriate transportation from the workplace and access to appropriate medical facilities.

Article 10

The employer shall ensure that:

(a) adequate training and retraining programmes and comprehensible instructions are provided for workers, at no cost to them, on safety and health matters as well as on the work assigned;

(b) in accordance with national laws and regulations, adequate supervision and control are provided on each shift to secure the safe operation of the mine;

(c) a system is established so that the names of all persons who are underground can be accurately known at any time, as well as their probable location;

(d) all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken; and

(e) a report, as specified by national laws and regulations, is made to the competent authority on accidents and dangerous occurrences.

c) prendre des dispositions pour maintenir la stabilité du terrain dans les zones auxquelles les personnes ont accès à l'occasion de leur travail;

d) chaque fois que cela est réalisable, prévoir, à partir de tout lieu de travail souterrain, deux issues dont chacune débouche sur une voie séparée menant au jour;

e) assurer le contrôle, l'évaluation et l'inspection périodique du milieu de travail afin d'identifier les divers dangers auxquels les travailleurs peuvent être exposés et d'évaluer le degré de cette exposition;

f) assurer une ventilation adéquate de tous les travaux souterrains auxquels l'accès est autorisé;

g) pour les zones exposées à des risques particuliers, élaborer et appliquer un plan d'exploitation et des procédures de nature à garantir la sécurité du système de travail et la protection des travailleurs;

h) prendre des mesures et des précautions adaptées au type d'exploitation minière afin de prévenir, de détecter et de combattre le déclenchement et la propagation d'incendies et d'explosions;

i) faire en sorte que les activités soient arrêtées et les travailleurs évacués vers un lieu sûr, lorsque la sécurité et la santé des travailleurs sont gravement menacées.

Article 8

L'employeur devra, pour chaque mine, préparer un plan d'action d'urgence spécifique en vue de faire face aux catastrophes industrielles et naturelles raisonnablement prévisibles.

Article 9

Lorsque des travailleurs sont exposés à des dangers d'ordre physique, chimique ou biologique, l'employeur sera tenu de:

a) tenir les travailleurs informés, d'une manière intelligible, des dangers que présente leur travail, des risques qu'il comporte pour leur santé et des mesures de prévention et de protection applicables;

b) prendre des mesures appropriées afin d'éliminer ou de réduire au minimum les risques résultant de cette exposition;

c) lorsque la protection adéquate contre les risques d'accident ou d'atteinte à la santé, et notamment contre l'exposition à des conditions nuisibles, ne peut être assurée par d'autres moyens, fournir et entretenir, sans frais pour les travailleurs, des vêtements appropriés aux besoins ainsi que des équipements et autres dispositifs de protection définis par la législation nationale; et

d) assurer aux travailleurs qui ont souffert d'une lésion ou d'une maladie sur le lieu de travail les premiers soins, des moyens adéquats de transport à partir du lieu de travail ainsi que l'accès à des services médicaux appropriés.

Article 10

L'employeur devra veiller à ce que:

a) les travailleurs reçoivent, sans frais pour eux, une formation et un recyclage adéquats ainsi que des instructions intelligibles relatives à la sécurité et à la santé ainsi qu'aux tâches qui leur sont assignées;

b) conformément à la législation nationale, une surveillance et un contrôle adéquats soient exercés sur chaque équipe afin qu'en cas de travail posté l'exploitation de la mine se déroule dans des conditions de sécurité;

c) un système soit mis en place afin que puissent être connus avec précision, à tout moment, les noms de toutes les personnes qui se trouvent au fond ainsi que leur localisation probable;

d) tous les accidents et incidents dangereux, tels que définis par la législation nationale, fassent l'objet d'une enquête, et que des mesures appropriées soient prises pour y remédier; et

e) un rapport sur les accidents et incidents dangereux soit établi conformément à la législation nationale à l'intention de l'autorité compétente.

Article 11

On the basis of general principles of occupational health and in accordance with national laws and regulations, the employer shall ensure the provision of regular health surveillance of workers exposed to occupational health hazards specific to mining.

Article 12

Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall coordinate the implementation of all measures concerning the safety and health of workers and shall be held primarily responsible for the safety of the operations. This shall not relieve individual employers from responsibility for the implementation of all measures concerning the safety and health of their workers.

B. Rights and duties of workers and their representatives

Article 13

1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:

(a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;

(b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and by the competent authority;

(c) to know and be informed of workplace hazards that may affect their safety or health;

(d) to obtain information, relevant to their safety or health, held by the employer or the competent authority;

(e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health; and

(f) to collectively select safety and health representatives.

2. The safety and health representatives referred to in paragraph 1(f) above shall, in accordance with national laws and regulations, have the following rights:

(a) to represent workers on all aspects of workplace safety and health, including where applicable, the exercise of the rights provided in paragraph 1 above;

(b) to:
  (i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and
  (ii) monitor and investigate safety and health matters;

(c) to have recourse to advisers and independent experts;

(d) to consult with the employer in a timely fashion on safety and health matters, including policies and procedures;

(e) to consult with the competent authority; and

(f) to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.

3. Procedures for the exercise of the rights referred to in paragraphs 1 and 2 above shall be specified:

(a) by national laws and regulations; and

(b) through consultations between employers and workers and their representatives.

4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.

Article 11

L'employeur devra s'assurer qu'une surveillance médicale régulière portant sur les travailleurs exposés à des risques professionnels propres aux activités minières est exercée selon les principes généraux de la médecine du travail et conformément à la législation nationale.

Article 12

Lorsque deux ou plusieurs employeurs se livrent à des activités dans la même mine, l'employeur responsable de la mine devra coordonner l'exécution de toutes les mesures relatives à la sécurité et à la santé des travailleurs et être tenu pour premier responsable de la sécurité des opérations sans que les employeurs individuels se trouvent exonérés de leur responsabilité propre en ce qui concerne la mise en œuvre de toutes les mesures relatives à la sécurité et à la santé de leurs travailleurs.

B. Droits et obligations des travailleurs et de leurs délégués

Article 13

1. La législation nationale visée à l'article 4 devra reconnaître aux travailleurs le droit:

a) de signaler les accidents, les incidents dangereux et les dangers à l'employeur et à l'autorité compétente;

b) de demander et obtenir que des inspections et des enquêtes soient menées par l'employeur et l'autorité compétente lorsqu'il existe un motif de préoccupation touchant à la sécurité et la santé; et

c) de connaître les dangers au lieu de travail susceptibles de nuire à leur sécurité ou à leur santé et d'en être informés;

d) d'obtenir les informations en possession de l'employeur ou de l'autorité compétente relatives à leur sécurité ou à leur santé;

e) de s'écarter de tout endroit dans la mine lorsqu'il y a des motifs raisonnables de penser qu'il existe une situation présentant un danger sérieux pour leur sécurité ou leur santé; et

f) de choisir collectivement des délégués à la sécurité et à la santé.

2. Les délégués des travailleurs à la sécurité et à la santé visés au paragraphe 1*f)* ci-dessus devront se voir reconnaître, conformément à la législation nationale, le droit:

a) de représenter les travailleurs pour tout ce qui touche à la sécurité et à la santé sur le lieu de travail, y compris selon le cas d'exercer les droits mentionnés au paragraphe 1 ci-dessus;

b) de:

i) participer aux inspections et aux enquêtes qui sont menées par l'employeur et par l'autorité compétente sur le lieu de travail;

ii) procéder à une surveillance et à des enquêtes relatives à la sécurité et la santé;

c) de faire appel à des conseillers et à des experts indépendants;

d) de tenir en temps opportun des consultations avec l'employeur au sujet des questions relatives à la sécurité et à la santé, y compris les politiques et procédures en la matière;

e) de tenir des consultations avec l'autorité compétente; et

f) de recevoir notification des accidents ainsi que des incidents dangereux, intéressant le secteur pour lequel ils ont été sélectionnés.

3. Les procédures relatives à l'exercice des droits visés aux paragraphes 1 et 2 ci-dessus seront précisées:

a) par la législation nationale, ainsi que

b) par le biais des consultations entre les employeurs et les travailleurs et leurs représentants.

4. La législation nationale devra faire en sorte que les droits visés aux paragraphes 1 et 2 ci-dessus puissent être exercés sans discrimination ni représailles.

Article 14

Under national laws and regulations, workers shall have the duty, in accordance with their training:

(a) to comply with prescribed safety and health measures;

(b) to take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper care and use of protective clothing, facilities and equipment placed at their disposal for this purpose;

(c) to report forthwith to their immediate supervisor any situation which they believe could present a risk to their safety or health or that of other persons, and which they cannot properly deal with themselves; and

(d) to cooperate with the employer to permit compliance with the duties and responsibilities placed on the employer pursuant to the Convention.

C. Cooperation

Article 15

Measures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines.

Part IV. Implementation

Article 16

The Member shall:

(a) take all necessary measures, including the provision of appropriate penalties and corrective measures, to ensure the effective enforcement of the provisions of the Convention; and

(b) provide appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide these services with the resources necessary for the accomplishment of their tasks.

Part V. Final Provisions

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

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

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

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

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the

Article 14

La législation nationale devra prévoir que, suivant leur formation, les travailleurs soient soumis à l'obligation:

a) de se conformer aux mesures prescrites en matière de sécurité et de santé;

b) de prendre raisonnablement soin de leur propre sécurité et de leur propre santé ainsi que de celles d'autres personnes susceptibles d'être affectées par leurs actes ou leurs omissions au travail, y compris en utilisant correctement les moyens, vêtements de protection et équipements mis à leur disposition à cet effet et veillant à en prendre soin;

c) de signaler immédiatement à leur supérieur direct toute situation pouvant à leur avis présenter un risque pour leur sécurité ou leur santé ou celles d'autres personnes et à laquelle ils ne sont pas eux-mêmes en mesure de faire face convenablement;

d) de coopérer avec l'employeur afin de faire en sorte que les obligations et responsabilités qui sont à la charge de ce dernier en vertu de la convention soient respectées.

C. Coopération

Article 15

Des mesures devront être prises, conformément à la législation nationale, pour encourager la coopération entre les employeurs et les travailleurs et leurs représentants en vue de promouvoir la sécurité et la santé dans les mines.

Partie IV. Application

Article 16

Le Membre devra:

a) adopter toutes les mesures nécessaires, y compris les sanctions et les mesures correctives appropriées, afin d'assurer l'application effective des dispositions de la convention; et

b) mettre en place des services d'inspection appropriés afin de contrôler l'application des mesures à prendre conformément à la convention, et doter ces services des ressources nécessaires pour l'accomplissement de leurs tâches.

Partie V. Dispositions finales

Article 17

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

Article 18

1. La présente convention ne liera que les Membres de l'Organisation internationale du Travail dont la ratification aura été enregistrée par le Directeur général du Bureau international du Travail.

2. Elle entrera en vigueur douze mois après que les ratifications de deux Membres auront été enregistrées par le Directeur général.

3. Par la suite, cette convention entrera en vigueur pour chaque Membre douze mois après la date où sa ratification aura été enregistrée.

Article 19

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail et par lui enregistré. La dénonciation ne prendra effet qu'une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans le délai d'une année après l'expiration de la période de dix années mentionnée au paragraphe

preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

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

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;
(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

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

Article 24

The English and French versions of the text of this Convention are equally authoritative.

précédent, ne fera pas usage de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention à l'expiration de chaque période de dix années dans les conditions prévues au présent article.

Article 20

1. Le Directeur général du Bureau international du Travail notifiera à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui seront communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification qui lui aura été communiquée, le Directeur général appellera l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 21

Le Directeur général du Bureau international du Travail communiquera au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et de tous actes de dénonciation qu'il aura enregistrés conformément aux articles précédents.

Article 22

Chaque fois qu'il le jugera nécessaire, le Conseil d'administration du Bureau international du Travail présentera à la Conférence générale un rapport sur l'application de la présente convention et examinera s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 23

1. Au cas où la Conférence adopterait une nouvelle convention portant révision totale ou partielle de la présente convention, et à moins que la nouvelle convention ne dispose autrement:

a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit, nonobstant l'article 19 ci-dessus, dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 24

Les versions française et anglaise du texte de la présente convention font également foi.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organization during its Eighty-second Session which was held at Geneva and declared closed the twenty-second day of June 1995.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1995.

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa quatre-vingt-deuxième session qui s'est tenue à Genève et qui a été déclarée close le 22 juin 1995.

EN FOI DE QUOI ont apposé leurs signatures, ce vingt-troisième jour de juin 1995:

The President of the Conference,
Le Président de la Conférence,

F. ROSALES ARGÜELLO

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,

M. HANSENNE

The text of the Convention as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la convention présentée ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

Certified true and complete copy,
Copie certifiée conforme et complète,

For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:

Anthony G. Freeman
Director
International Labor Office
Washington Branch

REPORT OF THE TRIPARTITE ADVISORY PANEL ON INTERNATIONAL LABOR STANDARDS REGARDING CONVENTION NO. 176 ON SAFETY AND HEALTH IN MINES

Summary

The Tripartite Advisory Panel on International Labor Standards (TAPILS) has examined in detail International Labor Organization (ILO) Convention 176 concerning Safety and Health in Mines. The members of TAPILS unanimously conclude that there are no legal impediments in law or practice to ratification of the Convention by the United States.

Convention 176 is a non-self-executing treaty. If ratified, Convention 176, as a non-self-executing treaty, would not be enforceable as a matter of United States law in United States courts. As existing legislation already brings the United States into compliance with Convention 176, no new legislation is required.

This report discusses the TAPILS review process and how TAPILS reviewed Convention 176 for possible ratification. A detailed description of how United States law and practice brings the United States into compliance with the Convention is included in the accompanying Statement of Law and Practice.

Function of TAPILS

TAPILS was established in 1980 by the President's Committee on the ILO. Its membership consists of legal advisors representing the Departments of Labor, State, and Commerce, the American Federation of Labor and Congress of Industrial Organizations, and the United States Council for International Business. Under its mandate, TAPILS is to examine ILO conventions and to determine and report to the President's Committee whether there are legal conflicts or differences between the requirements of the conventions and existing United States law and practice.

TAPILS examines ILO conventions in accordance with three ground rules agreed to by the President's Committee in October 1985 and incorporated in a Senate declaration adopted at the time the Senate gave its advice and consent to United States ratification of Convention 144 in 1988. The three ground rules provide that:

1) Each ILO convention will be examined on its merits on a tripartite basis;

2) If there are any differences between the convention and Federal law and practice, these differences will be dealt with in the normal legislative process; and

3) There is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

TAPILS conducts its work through an in-depth examination of the negotiating and legislative history leading to the adoption of a given convention by the International Labor Conference as well as the conclusions reached by the ILO Committee of Experts on the Application of Conventions and Recommendations, an independent supervisory group appointed by the ILO Governing Body. TAPILS then compares the provisions and interpretations of the convention with existing United States law and practice. As a result of this comparison, TAPILS may pose written and oral questions to officials of the ILO Standards Department and Office of the Legal Advisor in order to identify or resolve potential legal obstacles to United States ratification.[1]

Since 1980, TAPILS has examined ILO conventions under a "two-track" approach approved by the President's Committee, alternately considering human rights conventions and technical conventions. Under this approach, TAPILS previously concluded that four technical conventions, Convention 144 concerning Tripartite Consultations, Convention 147 concerning Minimum Standards in Merchant Ships, Convention 150 concerning Labor Administration, and Convention 160 concerning Labor Statistics, and two human rights conventions, Convention 105 concerning Abolition of Forced Labor and Convention 111 concerning Employment Discrimination, could be ratified without altering United States law and practice. The President's Committee subsequently unanimously recommended to the President that Conventions 105, 111, 144, 147, 150 and 160 be ratified. Following the advice and consent of the United States Senate, Conventions 105, 144, 147, 150, and 160 were ratified. Convention 111 is still pending before the Senate.

Preliminary Legal Review of Convention 176

With a view toward possible ratification of Convention 176, TAPILS began review of the convention provisions and the relevant United States law and practice in 1996. On April 1, 1997, in response to a request from TAPILS, the Solicitor of Labor distributed a preliminary legal analysis of Convention 176. That document disclosed the obligations under the Convention and described the principal federal statutes which appeared to bring the United States into compliance with the Convention. Although it identified several minor concerns with the language of the Convention, no issue appeared to represent a significant obstacle to ratification.

After consideration of this legal analysis, TAPILS formally established a working group on Convention 176. This working group consisted of a representative from the U.S. Council for International Business, a representative from the AFL-CIO, and a representative from the Office of the Solicitor.

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[1] As discussed in detail below, two questions regarding Articles 12 and 13 of Convention 176 were sent to the ILO. In addition, the question pertaining to Article 12 was discussed at length with ILO officials by telephone on September 28, 1998.

In order to determine the full meaning of the provisions of Convention 176, the working group thoroughly reviewed the existing "legislative history" of the drafting of the Convention. This legislative history consists of reports prepared by the ILO and the Committee on Safety and Health in Mines established by the International Labor Conference (ILC) in 1994, which were presented at the 81st session in 1994, and the 82d session in 1995 of the ILC, as well as debate by participants at those sessions.

Further information concerning the meaning of Convention 176 was gathered through correspondence and telephone conferences with representatives of the ILO Standards Branch. The TAPILS working group had consultations with the ILO Standards Branch primarily focused on two issues involving Articles 12 & 13:

1. Article 12 -- Responsibility of employer in charge for acts of an independent contractor.

During its review of Convention 176, TAPILS noted a possible inconsistency between the literal language of Article 12 and the practice which has evolved in enforcement actions under the Federal Mine Safety and Health Act. In particular, in construing the agency's authority under the Act, courts have recognized the authority of the Mine Safety and Health Administration (MSHA) to exercise what has come to be referred to as the agency's discretionary "dual citing authority." In exercising this authority, depending upon the facts in any given case, MSHA may elect to enforce against, i.e., cite, only the production operator (referred to as the employer in charge in the Convention), an independent contractor engaged by the production operator to perform a specific function, or both.

Article 12 of the Convention similarly recognizes that more than one employer can be undertaking activities at the same mine, while providing that the employer in charge shall have primary responsibility for activities occurring at the mine.

In an attempt to clarify this situation and to determine definitively whether the dual citing practice under the Act is consistent with Article 12, TAPILS submitted a written question to the ILO on February 11, 1999. The ILO's written response dated April 14, 1999 confirmed the consistency between U.S. practice and Article 12:

> In conclusion it is the Office's view that the primary responsibility of the employer in charge of the mine does not mean that the employer will always be held responsible if the responsibility could be attributed to another e.g. the independent contractor. But the primary responsibility means that the employer in charge of the mine **could** be held responsible. (Emphasis added)

Therefore, based upon our review and analysis of Article 12 and the confirming view of the ILO as set out immediately above, the United States understands that Article 12 of Convention 176 does not mean that the employer in charge shall always be held responsible for the acts of an independent contractor.

2. Article 13 -- Written notice of inspection to be provided to the operator.

TAPILS was concerned that Convention 176 does not specifically address the requirement contained in the Federal Mine Safety and Health Act that written notice, of any of the listed grounds for a Mine Safety and Health Administration inspection, be given to a mine operator prior to the time of the inspection. Article 13 of the Convention provides for a worker to request and obtain an inspection "where there is cause for concern on safety and health grounds." However, the Convention does not require a written notice from the miner or representative thereof and does not require that such notice be provided to the operator no later than at the time of the inspection. Rather, Article 13 allows for the procedures in the exercise of these rights to be set by national laws and regulations. Implementing regulations concerning procedures for processing hazardous conditions complaints have been promulgated by MSHA at 30 C.F.R. Part 43.

In its February 11, 1999 letter to the ILO, TAPILS also sought clarification regarding the procedure under U.S. law and practice whereby a miner can obtain an immediate inspection, and in particular whether U.S. law and practice in this regard is consistent with Article 13. In response to TAPILS's observation that Article 13 does not appear to require service on the production operator of a written, name-redacted, notice of a possible violation, the ILO pointed out that Article 13 expressly recognizes such matter is subject to national law and practice:

> A requirement under national laws and regulations that such a notice should be made in writing with a copy, the name of the miner being redacted, being sent to the Operator no later than at the time of the inspection would not appear in conflict with the provisions of the Convention.

The ratification of Convention 176 would not change or affect in any manner United States law and practice with respect to notice of mine inspection. Therefore, based upon TAPILS' own review and analysis of Article 13 and the confirming view of the ILO, the United States understands that ratification of Convention 176 would neither alter nor abrogate any requirement mandated by statute (30 U.S.C. 13(g)) that the miner or representative must sign the notice, or that copy of a written notice must be provided to the operator no later than at the time of inspection.

Attached to and made a part of this Report are copies of the previously cited letters from TAPILS to the ILO and the ILO's response thereto, dated February 11, 1999 and April 14, 1999 respectively.

Convention 176

The International Labor Organization (ILO) adopted Convention 176 concerning Safety and Health in Mines on June 22, 1995. One of the aims expressed in the Preamble is to facilitate and effect worker involvement in the preparation and implementation of safety and health measures concerning hazards and risks which arise in the mining industry. The Preamble further recognizes the desirability of preventing mine-related injuries and deaths as well as damage to the environment as a result of mining activities. While the Preamble also notes the relevance of 13 enumerated existing Conventions and Recommendations which relate to or affect occupational safety and health, any member which elects to ratify Convention 176 need not have ratified such 13 existing Conventions, nor would ratification of Convention 176 have the effect of ratifying any or all of such other Conventions.

Articles 1 through 3 define "mine," address the scope of the Convention, and state the central obligation of the Convention to "formulate, carry out and periodically review a coherent policy on safety and health in mines". Articles 4 and 5 provide that national laws and regulation shall dictate the application of the Convention, designate an authority "to monitor and regulate the various aspects of safety and health in mines," and institute specific oversight actions to insure safety and health in mines. These oversight obligations include requirements for supervision, inspection, reporting, and the compilation and publication of statistics.

Articles 6 through 12 address the responsibilities of the employer in providing preventive and protective measures in the mine. Article 6 sets a priority for employers to follow in confronting mine safety and health risks. Article 7 provides greater detail of an employers' responsibilities for eliminating or minimizing risk. These responsibilities include proper mine design, construction and equipment of mines to ensure a safe and healthy working environment. Also, employers are required to "ensure that the mine is commissioned, operated, maintained and decommissioned" so that workers can perform their activities "without endangering their safety and health." Specifically, the employer must provide such safety and health provisions as two means of exit from a mine, adequate ventilation, regular inspections, and measures to prevent, detect and combat fires and explosions. Article 8 requires the employer to establish an emergency response plan "for reasonably foreseeable industrial and natural disasters." Article 9 outlines employers' responsibilities when a worker is exposed to physical, chemical or biological hazards. Article 10 requires free safety and health training for workers, adequate supervision and control of each shift, and recording of the names of all personnel in underground mine. The employer must also investigate and report to MSHA on all accidents and dangerous occurrences and the appropriate remedial action taken. Article 11 requires that the employer provide "regular health surveillance of workers exposed to occupational health hazards specific to mining."

Article 12 outlines the safety and health responsibilities of the "employer in charge" when two or more employers are undertaking activities in the same mine.

Articles 13 and 14 provide for the rights and duties of workers and their representatives. Article 13 lays out these rights, which include the right to report an accident, to under certain circumstances request and obtain an inspection, the right of an employee to remove himself from the mine under certain dangerous circumstances, and to be informed regarding workplace hazards that may affect their safety and health. Collectively selected safety and health representatives are also guaranteed. Article 14 establishes the duties of employees with respect to safety and health in mines. Article 15 allows for measures to be taken to encourage employers and workers and their representatives to cooperate in promoting safety and health in mines.

Article 16 obligates the ratifying nation to take "necessary measures" to "ensure the effective enforcement of the provisions of the Convention." This would include supplying sufficient resources to provide appropriate inspection services. Articles 17 through 24 contain standard final provisions, including rules for coming into force, for notice of ratification, and for denunciation.

As noted above, a detailed analysis of the obligations of Convention 176 and the extent to which U.S. law and practice is consistent with those requirements is contained in the Statement of United States Law and Practice.

Conclusion

In accordance with the ground rules governing its review of ILO conventions, TAPILS concludes that, the United States can ratify Convention 176 without amending United States law and practice.

U.S. Department of Labor

Bureau of International Labor Affairs
Washington, D.C. 20210

February 11, 1999

Mr. André Zenger
Acting Director, International Labor
Standards Department
International Labor Office
Geneva, Switzerland

96-39-CTRQ
19004802043

Dear Mr. Zenger:

As a follow-up to the recent informal consultations between officials of the International Labor Office and members of the Tripartite Advisory Panel on International Labor Standards (TAPILS), enclosed are two questions aimed at clarifying the meaning and scope of ILO Convention No. 176 concerning Safety and Health in Mines. These questions deal specifically with Articles 12 and 13 of the Convention.

Because of the U.S. constitutional system and treaty ratification procedures, the United States requires a precise understanding of the obligations that it undertakes at the time it ratifies a convention. We recognize that the ILO Secretariat has no authority to definitively interpret ILO standards; however, this consultative procedure is of great value to TAPILS in determining whether there are any legal obstacles to ratification of Convention No. 176.

Thank you once again for your assistance.

Sincerely,

Julia Edens Misner

Julia Edens Misner
Office of International Organizations

Enclosure

DIVISION OF
LABOR-MANAGEMENT LAWS
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210
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1. The Federal Mine Safety and Health Act (30 U.S.C. 802(d)) defines an "operator" as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." Thus under the Act, both a production operator and an independent contractor utilized by such production operator are subject to its terms and provisions, including applicable duly promulgated standards and regulations and each can thus be the subject of an enforcement proceeding. In enforcing the Act, the Mine Safety and Health Administration ("MSHA") holds the production operator ultimately responsible for all activities occurring at the mine, whether performed by its own employees or those of an independent contractor. Notwithstanding this ultimate responsibility of the production operator, there may arise situations where an enforcement action is taken only against the independent contractor. For example, at a new mine where the only activity involves the construction of slopes or shafts by the employees of the independent contractor, production operations have not commenced and no other employees are on site, MSHA may issue citations for safety or health violations only against the independent contractor. Similarly, MSHA may elect to cite only the independent contractor for safety or health violations where the independent contractor's employees are working in an area sufficiently segregated from the site where production activities are being performed. In other situations, MSHA might cite both the production operator and the independent contractor for the violations. For example, when the production operator has contributed to either the occurrence or continuation of a violation by the independent contractor, both parties generally will be issued citations.

Neither the Federal Mine Safety and Health Act nor, as we construe it, Article 12 of Convention 176, purport to modify or affect whatever rights an employee might have to proceed under State tort law against either the production operator of a mine or the independent contractor of such operator by which the employee is employed for injuries sustained by the employee during the course of his employment. Under U.S. law, generally speaking an employee injured on the job is covered by the workers compensation law of the State in which the injury occurs, regardless of fault. Typically such employee's exclusive remedy would be the scheduled amount set by State law for the injury. Whether such employee might have in the alternative a remedy in tort is determined by State law, and neither the Federal Mine Safety and Health Act nor Article 12 of Convention 176 would add to or detract from such rights as might otherwise be provided by State tort law.

Article 12 of Convention 176 concerning safety and health in mines recognizes that two or more employers can be undertaking activities at the same mine, in which situation the "employer in charge ... shall be held primarily responsible for the safety of the operations." Article 12 goes on to provide that in such situations, employers other than the employer in charge are not relieved from "responsibility for the implementation of all measures concerning the safety and health of their workers."

A. We understand that Article 12 of Convention 176 concerning safety and health in mines does not mean that the employer in charge shall always be held responsible for the acts of an independent contractor. Is this understanding correct?

2. The Federal Mine Safety and Health Act (30 U.S.C. 813(g)) provides, inter alia, that whenever a miner or representative thereof has reasonable grounds to believe that an operator is in violation of either the Act or a mandatory health or safety standard, or that a condition which constitutes an imminent danger exists, such miner or representative shall have the right to obtain an immediate inspection by giving notice thereof to the Mine Safety and Health Administration ("MSHA"). Such notice shall be written and signed by the miner or representative, with a copy thereof being provided to the operator no later than at the time of inspection, provided however that the name of the miner that gives the notice shall be redacted from the copy of the written notice provided to the operator. Implementing regulations concerning procedures for processing hazardous conditions complaints have been promulgated by MSHA at 30 CFR Part 43.

Article 13 of Convention 176 recognizes, at section 1(b), that "where there is cause for concern on safety and health grounds," a worker shall have the right to request and obtain an inspection "to be conducted by the employer and by the competent authority." Convention 176 does not contain a requirement that a miner (or representative) sign a written notice, nor does it contain a requirement that a copy of a written notice be provided to the operator no later than at the time of inspection. To the contrary, Article 13, section 3(a) provides that "[p]rocedures for the exercise of the rights referred to in paragraph[] 1 ... shall be specified: (a) by national laws and regulations...."

(a) Convention 176 does not with specificity address the matters set forth in the two preceding paragraphs and thus it is our understanding that ratification of Convention 176 would neither alter nor abrogate any requirement mandated by statute (30 U.S.C. 813(g)) that the miner or representative must sign the notice, or that a copy of a written notice must be provided to the operator no later than at the time of inspection. Is our understanding correct?

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14 AVR. 1999

Dear Ms. Misner,

I refer to your communication dated 11 February, 1999 concerning two questions aimed at clarifying the meaning and scope of the ILO's Safety and Health in Mines Convention, 1995 (No. 176). I am pleased to provide you with the Office's informal interpretation of certain provisions of Convention No. 176 with the usual reservation that the Constitution of the International Labour Organization confers no special competence on the Office to give authentic interpretations of international labour Conventions, and that any decision concerning a particular Convention must rest in the first instance with the Government concerned, subject, in the case of ratification, to the assessment of the supervisory bodies of the ILO.

1. Your first question relates to your understanding that Article 12 of Convention No. 176 does not mean that the employer in charge shall always be held responsible for the acts of an independent contractor.

Article 12 of Convention No. 176 reads:

> Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall coordinate the implementation of all measures concerning the safety and health of workers and shall be held primarily responsible for the safety of the operations. This shall not relieve individual employers from responsibility for the implementation of all measures concerning the safety and health of their workers.

The preparatory work concerning the adoption of this Convention suggests that the intention of this Article was to clearly identify who was to be responsible for coordination and for safety of the operations at a mine. Primary responsibility was placed on the employer in charge of the mine. The Government of Sweden had in its commentaries on the Office text following the first discussion proposed an amendment which would make it clear that the employer responsible for the mine would not be held liable for the safety of the activities which were directly under a contractor's supervision. The Office considered that the amendment proposed was significant and thought it best to refer the proposal to the Conference.[1] The last sentence of the current Article 12 was inserted at the second discussion stage following an amendment submitted by the Government members of Botswana, Lesotho, Malawi, Zambia and Zimbabwe. An amendment with a similar purpose was also submitted by the workers' members.[2]

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[1] ICL, 82nd Session (1995), Report IV (2A), p.37.

[2] ILC, 82nd Session (1995), Record of Proceedings No. 19, paras. 78-79.

Article 12 governs the situation where more than one employer, as that term is defined in Article 1, paragraph 2 of the Convention, is undertaking activities at the same mine. It does not deal with the situation where there is only one employer undertaking activities at the site. The first example in your letter refers to a case where only the independent contractor is undertaking an activity at the site at the time in question. Production operations at the site have not yet commenced and no employees, other than those of the independent contractor, are on the site. Article 12 would therefore not apply to such a case.

The second example cited in your letter is somewhat different. Although the independent contractor's employees in this example would be working in an area sufficiently segregated from the site where the production activities are being performed, the production operator would still be undertaking activities at the mine. In such a case, Article 12 would apply and in keeping with the natural meaning of the terms used, since the employer in charge of the mine is to be "held primarily responsible for the safety of the operations", (emphasis added) the production operator in this case could be responsible.

In conclusion it is the Office's view that the primary responsibility of the employer in charge of the mine does not mean that the employer will always be held responsible if the responsibility could be attributed to another e.g. the independent contractor. But the primary responsibility means that the employer in charge of the mine could be held responsible.

2. The second question raised is whether the requirement that a notice requesting an inspection be written and signed by a miner would be compatible with Article 13, paragraph 1 (b) of Convention No.176.

Article 13, paragraphs 1 (b), 3 (a), and 4 read as follows:

> 1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:
> ...
> (b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and the competent authority;
> ...
> 3 Procedures for the exercise of the rights referred to in paragraphs 1 and 2 above shall be specified:
> (a) by national laws and regulations:...
> ...
> 4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.

The preparatory work does not deal with the issue of the manner in which such requests are to be made. However, it is to be noted that during the course of the second discussion, the Workers' members had proposed a sub-amendment to add the words "and obtain" after the words "to request". The sub-amendment was supported by the Government of Canada with the explanation that the qualification meant that the final decision concerning the request for the inspection would be made by the employer and the competent authority.[1] Such a procedure implies that some form of written procedure would be necessary to implement the inspection.

Article 13, paragraph 1 (b) must be read in conjunction with paragraphs 3 (a) and 4 of the same Article of the Convention. Paragraph 3 provides that procedures for the exercise of the rights

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[1] Ibid., para.83.

referred to in paragraphs 1 and 2 of that Article - which includes the right of a worker to request and obtain, where there is cause for concern on safety and health grounds, an inspection and investigation - shall be specified (a) by national laws and regulations and (b) through consultations between employers and workers and their representatives. Paragraph 4 also provides that national laws and regulations shall ensure that the rights in question can be exercised without discrimination or retaliation. A requirement under national laws and regulations that such a notice should be made in writing with a copy, the name of the miner being redacted, being sent to the operator no later than at the time of the inspection would not appear in conflict with the provisions of the Convention.

I hope this will be of help in your consideration of the possible ratification of this Convention.

Yours sincerely,

For the Director-General:

André Zenger
Director a.i. of the International
Labour Standards Department.

Statement of United States Law and Practice with Respect to International Labor Organization Convention No. 176 Concerning Safety and Health in Mines

Introduction

This is the statement of United States law and practice with respect to Convention No. 176. It includes an article-by-article analysis of the Convention's provisions and the extent to which United States law and practice is consistent with the Convention's provisions. Our analysis reveals that a direct correlation exists between the Convention and the relevant United States law, the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. As described below, United States law and practice is consistent with Convention 176 and the ratification of this Convention would not change or require any change in current United States law and practice.[1]

The International Labor Organization (ILO) adopted Convention 176 concerning safety and health in mines on June 22, 1995. Pursuant to the provisions of Article 18, Convention 176 went into effect on May 6, 1998. The Convention contains introductory material setting out the aims of the Convention, including the promotion of worker involvement in the preparation and implementation of safety and health measures concerning the hazards and risks arising from the mining industry. It further recognizes the desirability of preventing mine-related injuries and damage to the environment from mine operations.

Convention 176 is a promotional convention. This means that the Convention obligates the ratifying country to pursue a policy based on the Convention's guidelines which will guide present and future decisions in the field of mining safety and health. In such pursuit, ratifying countries are granted considerable latitude and discretion in precisely how they will implement this policy in that the Convention permits a country to pursue the Convention's policy "in the light of national conditions and practice."

The Convention consists of five parts, containing a total of 24 articles. Part I (which consists of Article 1) sets out the definitions of the terms "mine" and "employer." Part II (Articles 2-5) sets out the scope, i.e., coverage, of the Convention, and the means of application thereof. Part III, Sub-Part A (Articles 6-12) prescribes the responsibilities imposed by

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[1] References in this statement to the Federal Mine Safety and Health Act will generally be to "the Act" or specific sections thereof; references to Convention 176 will generally be to "the Convention" or to specific articles thereof.

the Convention upon employers and Sub-Part B (Articles 13-14) sets out the rights and duties of workers and their representatives; Sub-Part C (Article 15) encourages employers and workers to undertake joint efforts to promote mine safety and health. Part IV (Article 16) sets out the responsibilities of Members to implement the provisions of the Convention, and Part V (Articles 17-24) contains standard final provisions, including rules for the Convention coming into force, for notice of ratification and for denunciation.

TAPILS Legal Review

Following over two years of legal review, the Tripartite Advisory Panel on International Labor Standards (TAPILS), a subgroup of the President's Committee on the ILO, consisting of legal representatives from the Departments of Labor, State, and Commerce, the United States Council for International Business ("the Council"), and the American Federation of Labor - Congress of Industrial Organizations ("AFL-CIO"), has unanimously concluded that there are no legal impediments in law or practice to ratification of the Convention by the United States. See appended TAPILS Report.

The review of Convention 176 was conducted in accordance with three ground rules agreed to by the President's Committee in October 1985 and incorporated in a Senate declaration adopted at the time the Senate gave its advice and consent to United States ratification of Convention 144 in 1988. The three ground rules provide that:

1) Each ILO convention will be examined on its merits on a tripartite basis;

2) If there are any differences between the convention and Federal law and practice, these differences will be dealt with in the normal legislative process; and

3) There is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by ratification.

The implementation of these ground rules assures that the legal consequences of ratification of an ILO convention, in particular, whether it would result in or mandate changes in domestic law, are identified through an orderly, in-depth examination of a convention's legal requirements prior to ratification.

Following its comprehensive legal review of the requirements of Convention 176 and United States law and practice, TAPILS has determined that the current law and practice of the United States with respect to mine safety and health satisfy the requirements of Convention 176. Therefore, Convention 176 will not require or mandate any changes in Federal or State law.[2] As discussed in a subsequent section of this report, however, TAPILS has recommended that two understandings (on Articles 12 and 13)be adopted to remove any ambiguities as to the domestic application of Convention 176.

Substantive Provisions

Convention 176 is a non-self executing treaty. As such, it would not, if ratified, become directly enforceable as U.S. law in U.S. courts. Existing legislation brings the U.S into full compliance with Convention 176 and no additional implementing legislation is required.

Preamble

The Preamble recognizes that one of the purposes of the Convention is the promotion and encouragement of worker involvement in the preparation and implementation of safety and health measures concerning the hazards and risks arising from the mining industry. The Preamble further recognizes the desirability of preventing mine-related injuries and damage to the environment from mine operations. The Preamble contains references to existing ILO Conventions and Recommendations relating to worker occupational safety and health protections. A member ratifying Convention 176 does not thereby ratify those other Conventions and Recommendations nor must a member ratifying Convention 176 ratify those other instruments. The Preamble contains no substantive or procedural obligations.

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[2] Pursuant to section 506 of the Mine Safety and Health Act of 1977 (30 U.S.C. 955), the Federal MSHA law pre-empts a State law which is in conflict. If State law does not conflict with Federal law and provides greater protections to miners, it is not pre-empted by MSHA. Since this Statement of Law and Practice concludes that Convention 176 and the Federal MSHA law are not in conflict, and the only inconsistency, if any, which a State law might have with the convention would result in greater protections, ratification of this convention would not raise problems vis-a-vis State laws.

Part I. Definitions

Article 1

Article 1 contains definitions for the terms "mine" and "employer." "Mine" is defined to cover both "surface or underground sites" where certain particular activities take place and "all machinery, equipment, appliances, plant, buildings and civil engineering structures used in" the particular activities. "Employer" is defined as "any physical or legal person who employs one or more workers in a mine". This includes the operator, the principal contractor, contractor or subcontractor.

In the United States, all mines are covered under the provisions of the Federal Mine Safety and Health Act of 1977. The Act amended the Federal Coal Mine Health and Safety Act of 1969 and therefore refers exclusively to "coal mines" in several sections. However, while these provisions appear limiting, the relevant sections of the Act were intended to apply in the interim period prior to the promulgation of regulations, which typically follow the Act in providing similar safety and health protections and requirements.

The Act is consistent with the Convention in that the term "mine" is defined to include both surface and underground sites where exploration and mineral extraction activities are carried out. The term also includes activities at associated preparation plants, equipment and structures. Oil and gas extraction are not covered by this Convention.

The Act's definition of "operator" is consistent with the Article's requirements of an "employer." As discussed in more detail infra in the section pertaining to Article 12, under domestic law where two or more employers are simultaneously engaged in activities at the same mine, the employer in charge bears the ultimate responsibility for actions taken by its independent contractors, although in appropriate cases the Mine Safety and Health Administration might elect to enforce only against the independent contractor.

Part II. Scope and Means of Application

Article 2

Article 2 recognizes that the Convention applies to all mines but allows ratifying members to exclude certain categories of mines from Convention coverage where national law and practice provides protections not inferior to those provided for in the Convention. The decision to exclude such mines is to be made by the appropriate authority after consultation with representatives of workers and employers. The decision to exclude a category of mines must be reported in a nation's Article 22 report along with

the reasons for the exclusion. Additionally, for those members which exclude certain categories of mines pursuant to this Article, it is required that the member "make plans for progressively covering all mines."

This Article allows for the exclusion of certain categories of mines if the coverage is not inferior to the protections suggested by the Convention. This flexibility would only assist a nation in satisfying the requisites of the Convention. The Act covers any "mine, the products of which enter commerce, or the operation or products of which affect commerce, and each operator of such mine, and every miner in such mine".[3] Ideally, the United States would prefer that this Article cover all mines without exception as is the case in the United States pursuant to the Federal Mine Safety and Health Act.

Article 3

Article 3 requires that, after consultation with representative organizations of employers and workers concerned, the ratifying member, based on national conditions and practice, "formulate, carry out and periodically review a coherent policy on safety and health in mines," with particular effect given to the provisions of the Convention.

In the United States, national mine policy is determined under the Act by the Secretary of Labor or his delegate. The Secretary has delegated the day-to-day administration of the Act to the Assistant Secretary for Mine Safety and Health. The Assistant Secretary heads the Mine Safety and Health Administration ("MSHA") which would be the "competent authority" for the purposes of this Convention. The input of representatives of workers and employers are considered in the formulation and the implementation of the national policy under the auspices of the MSHA, both formally as in the case of agency rulemaking and informally as in the case of public hearings.

Article 4

Article 4 states the basic guarantee of the Convention, that national laws and regulations shall ensure its application. These enactments shall be supplemented by "technical standards, guidelines or codes of practice" or "other means of application consistent with national practice" as determined by the "competent authority."

As noted above, the MSHA is the competent authority as established by the United States Congress in the Act. The MSHA

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[3] 30 U.S.C. § 803.

has issued extensive regulations explaining the requirements for mining and mine safety.[4] Additional guidance beyond the Act and its regulations would not be unusual as a supplement to the existing framework. For instance, the Secretary is required to establish guidelines for criteria on additional inspections of qualifying mines.[5] Another example of guidance provided by the agency not required by statute is the publicly available MSHA Program Policy Manual, which sets out, inter alia, the agency's general enforcement policy and guidelines on specific topics of interest to both operators and miners.

Article 5

1. Article 5 defines the scope and composition of the national laws and regulations provided for in Article 4. Initially, The "competent authority" is delegated the responsibility "to monitor and regulate the various aspects of safety and health in mines."

The Act provides that the Secretary shall make frequent mine inspections and investigations. Moreover, the Act established the MSHA to be headed by a designated appointee of the Secretary. As previously noted, the Secretary has delegated to the Assistant Secretary for Mine Safety and Health specific responsibilities under the Act as the "competent authority" to monitor and regulate for safety and health in mines.

2. National laws and regulations are required to provide for:

(a) supervision of safety and health in mines;

A purpose of the Act is to require that each operator of a mine and every miner comply with the mandatory health and safety standards promulgated to improve the health and safety of the Nation's mines and to protect the Nation's miners.

(b) the inspection of mines by inspectors determined by the competent authority;

As noted above, the Act requires that mines be inspected and investigated routinely for the purpose of "obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines".[6] The inspections also gather information as to mandatory health and safety standards, determine whether imminent danger exists, and

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[4] See 30 C.F.R. Chap. I.

[5] See 30 U.S.C. § 813(a).

[6] 30 U.S.C. § 813(a).

determine whether there is compliance with the mandatory health and safety standards or with any citation, order, or decision issued under the Act. Special provisions for additional inspections are provided for in mines where excessive quantities of methane or other explosive gases are detected, or where a gas explosion has occurred resulting in death or serious injury at any time during the previous five years, or there exists other especially hazardous conditions.[7]

(c) procedures for reporting and investigating "fatal and serious accidents, dangerous occurrences and mine disasters," as defined by national laws and regulations;

The Act also provides procedures for investigating "any accident or other occurrence relating to health and safety" in a mine.[8] Public hearings are provided for as are subpoenas to ensure witness testimony and production of documents. Further, the regulations require that employers "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents".[9] Similarly, employers are required to maintain records of all accidents and investigations.

(d) compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, as defined by national laws and regulations;

The regulations require that every operator, on MSHA provided forms, "report each accident, occupational injury, or occupational illness at the mine" (emphasis added).[10] The reports must be mailed to the MSHA within ten working days after an accident or occupational injury occurs or occupational illness is diagnosed. A copy of every report is required to be maintained at the mine office for five years after submission. Records of accidents and investigations are maintained by the MSHA and are available for inspection by interested persons. These records "shall be reported at a frequency determined by the Secretary, but at least annually."[11] The Act also authorizes the Secretary "to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained."[12]

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[7] See 30 U.S.C. § 813(i).

[8] 30 U.S.C. § 813(b).

[9] 30 U.S.C. § 813(c).

[10] 30 C.F.R. § 50.20.

[11] 30 U.S.C. § 813(d).

[12] 30 U.S.C. § 813(h).

Presently, the MSHA compiles and publishes data on all the events required in Article 5.2(d). Evaluation of the data produced from this required reporting and collection permits the MSHA to assess risks and problem areas of mining operations and is an important tool used in correcting safety and health hazards. Moreover, publishing the information collected is crucial in communicating similar hazards and problems to other segments of the mining industry so mine operators and miners themselves can learn from the mistakes of others. Finally, collection and dissemination of this information annually is used to assess the industry's progress in improving safety and health conditions in the mines. The MSHA would have preferred the Convention language to include the word "all" before the terms "accident, occupational diseases and dangerous occurrences" so that the potential for skewing fatality and injury statistics would be avoided. However, as the Article's language can be construed to include "all" the listed events, the MSHA's concern would not appear to preclude compliance with this Convention. In addition, since the requirements of the Act exceed those of the Convention with respect to the reporting of accidents, ratification of Convention 176 would not present any problem under United States law and practice.

(e) authority of the competent authority to "suspend or restrict" mining activities based on safety or health concerns until the problem is corrected;

The Act allows for the MSHA, upon a finding of imminent danger during any inspection or investigation of a mine, to determine the extent of the area of such mine throughout which the danger exists and to issue an order requiring the operator to cause all persons, except designated personnel, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the MSHA determines that the imminent danger no longer exists.[13]

Upon finding that a mine operator has violated the Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to the Act, the Secretary or his authorized representative shall issue a citation. The citation sets a reasonable time for the abatement of the violation. If upon a follow-up inspection of the mine, the Secretary determines that the noted citation has not been abated within the period of time fixed therein, or as subsequently extended, the operator shall be ordered to immediately cause those persons working in the area determined to be affected to be withdrawn from, and to be prohibited from entering, such area until an authorized

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[13] 30 U.S.C. § 817(a).

representative of the Secretary determines that such violation has been abated.[14]

(f) "establishment of effective procedures to ensure the implementation of the rights of workers and representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace."

The Act provides for a representative of miners to accompany the MSHA representative during the physical inspection of any mine made pursuant to the provisions outlining the MSHA's authority to "make frequent inspections and investigations" each year of all mines.[15] The representatives of miners are included to aid in such inspections and to participate in pre- or post-inspection conferences held at the mine. Further, the Act requires that a representative who participates in such inspections shall "suffer no loss of pay during the period of his participation."[16]

The Act further provides for a miner or representative of miners to obtain immediate inspections from the MSHA under certain circumstances.[17] The rights of employees are more fully addressed in Articles 13-14.

With regard to modifications to a mine's mandatory safety standards, public hearings are provided for to allow the representative of miners from such affected mine or other interested parties the opportunity to "present information relating to the modification of such standard."[18] Also, prior to granting any exception to a mandatory standard, the finding of the MSHA must be made public and available to the representative of the miners from the affected mine. The MSHA's final decision is provided to the miners' representative.

3. Article 5 also requires the supervision of explosives and initiating devices during manufacture, storage, transport and use.

The Act and its regulations provide extensive instruction on the manufacture, storage, transport, and use of explosives and

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[14] 30 U.S.C. § 814(b).

[15] 30 U.S.C. § 813(f).

[16] Id.

[17] 30 U.S.C. § 813(g).

[18] 30 U.S.C. § 811(c).

initiating devices. The regulations specifically provide for trained or "qualified" persons to handle such explosives.[19]

4. The national laws and regulations must also specify:

(a) requirements regarding mine rescue, first aid and appropriate medical facilities;

The Act and regulations require that every operator "make arrangements in advance for obtaining emergency medical assistance and transportation for injured persons."[20] Selected persons of the operator must be trained in first aid and such training must be offered to all miners. Emergency communications must also "be provided to the nearest point of assistance."[21] Further, every coal mine must "have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces."[22] The regulations require similar protections for other mines. Through regulations implementing provisions of the Act, each operator of an underground mine is required to "assure the availability of mine rescue capability for purposes of emergency rescue and recovery."[23] This includes requirements concerning mine rescue stations, containing specified equipment.

(b) obligations as to self-rescue respiratory devices in underground mines;

The Act requires that each underground coal mine operator make available to each miner a self-rescue device approved by the MSHA.[24] This device must be adequate to protect a miner for at least one hour. The operator is also required to train each miner in the use of the device.

(c) protective measures for abandoned mine workings;

The Act requires that the Secretary prescribe the manner in which abandoned mine openings or openings of mines which are declared

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[19] See e.g., 30 C.F.R. §§ 56.6300(a); 57.6300(a); 75.1301.

[20] 30 U.S.C. § 877(m); see 30 C.F.R. §§ 56.18014; 57.18014.

[21] Id.

[22] Id.

[23] 30 C.F.R. § 49.1 (implementing 30 U.S.C. § 825(e).

[24] See 30 U.S.C. § 877(n).

inactive are to be sealed by underground coal mine operators.[25] The regulations for underground metal and non-metal mines further require that an operator "effectively close or fence off all surface openings down which persons could fall or through which persons could enter."[26] Also, near all such openings, trespass warnings and appropriate danger notices must be posted. For underground coal mines, shaft openings are required to be capped or filled.

(d) requirements for the safe storage, transportation and disposal of hazardous substances;

The regulations provide for the safe storage and transportation of hazardous materials. Regulations also define specific rules for the creation and maintenance of refuse piles at mine sites.

(e) where appropriate an obligation to supply sufficient sanitary conveniences and facilities to wash, change and eat, and to maintain them in hygienic condition.

The Act empowers the Secretary to require that a coal mine operator "provide adequate facilities for the miners to change from the clothes worn underground, to provide for the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities."[27] Additionally, an adequate supply of potable water must "be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary containers."[28]

The regulations similarly require operators of metal and non-metal mines to provide potable water, and toilet facilities as well as requiring proper housekeeping of work places, passageways, storerooms and service rooms.

5. The laws and regulations are required to provide that the employer in charge insure that the above conditions are planned prior to the start of operation of the mine. These plans should be updated when appropriate.

The law and practice of the United States is consistent with the requirement since mine designs and modifications are reviewed and accepted by the MSHA for underground mines in certain areas such

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[25] 30 U.S.C. § 877(k); 30 C.F.R. §§ 75.1711, 75.1711-1.

[26] 30 C.F.R. § 57.20021.

[27] 30 U.S.C. § 877(l).

[28] 30 U.S.C. § 877(s).

as ventilation and ground control. This process assesses risks and ensures that precautionary measures are taken.

Part III. Preventive and Protective Measures at the Mine

A. Responsibilities of Employers

Article 6

Article 6, provides for the priority in which an employer assesses a risk. The greatest priority is to "eliminate the risk", then to "control the risk at source", "minimize the risk by means that include the design of safe work system", and "in so far as the risk remains, provide for the use of personal protective equipment." This provision is qualified by the caveat "having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence."

While the Act does not per se set out a specific heirarchy of risk as is the case in Article 6, the Act is clear that prevention of death, injuries and occupational diseases is the primary goal of the statute. See § 801 (c), (d), and (g), and § 811(a). Section 811(a)(6)(A), which deals with toxic materials or harmful physical agents, sets a level of "no material impairment of health or functional capacity" for promulgation of rules in this area. The Act requires that every underground coal mine operator adopt a ventilation plan suitable to the conditions and mining system of the mine and approved by the MSHA. These plans are reviewed by the operator and the MSHA at least every six months. The regulations also require the submission and approval of such ventilation plans for underground metal and non-metal mines.[29] The operator is responsible for the proper maintenance and care of all detection devices for methane and oxygen deficiency to ensure that the devices are in a permissible condition. Specific requirements to minimize safety and health risks are addressed more fully in Article 7.

Where a particular hazard cannot be eliminated, e.g., coal dust or other airborne contaminants, MSHA standards require use of engineering and environmental controls to contain the hazard with use of personal protective equipment as a last resort. See 30 C.F.R. 70.300 and 30 C.F.R. 57.5001-.5006, and particularly 57.5005. The regulations set out extensive requirements for the issuance of personal protective equipment. All persons in or around a mine are required to wear a hard hat, protective footwear, and eye protection. Safety belts and lines are required where there is a danger of falling, with the added requirement of a second person tending the lines. Protective clothing must be provided and maintained "whenever hazards of

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[29] See 30 C.F.R. § 57.8520.

process or environment, chemical hazards, radiological hazards, or mechanical irritants are encountered in a manner capable of causing injury or impairment."[30]

Article 7

Article 7 obligates employers to eliminate or minimize all safety and health risks in mines under their control. Employers are required to ensure that:

(a) "the mine is designed, constructed and provided with electrical, mechanical and other equipment ... to provide for a safe and healthy working environment;"

Extensive statutory provisions define the requirements for electrical equipment underground. Coal mine operators are required to "maintain in permissible condition all electric face equipment . . . which is taken into or used inby (sic.) the last open crosscut of any such mine."[31] Further, each operator must file "with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations".[32] Additional safeguards are in place to guarantee the permissibility and maintenance of the electric face equipment. Further, coal standards for both underground and surface mines in the regulations address numerous electrical and mechanical hazards.[33]

The Act also provides for protective installation of trailing cables, grounding, underground voltage circuits, and trolley wires. As far as communication is concerned, the Act requires "[t]elephone service or equivalent two-way communication facilities, approved by the Secretary or his authorized representative, be provided between the surface and each landing of main shafts and slopes and between the surface and each working section of any coal mine that is more than one hundred feet from a portal."[34] Operators are also required to maintain a map with the location and electrical rating of all stationary electric apparatus in connection with the mine electric system.

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[30] See e.g., 30 C.F.R. §§ 56.15006, 57.15006.

[31] 30 U.S.C. § 865(a)(3).

[32] 30 U.S.C. § 865(a)(4).

[33] See generally 30 C.F.R. Parts 75 and 77.

[34] 30 U.S.C. § 876.

The regulations also provide for extensive requirements pertaining to the safe use of electrical and mechanical equipment in metal and non-metal mines.

(b) the mine is "commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned" without endangering their safety or health or that of another person;

Every operator of an underground coal mine must provide for inspection of all MSHA designated areas prior to the beginning of any shift. A certified examiner designated by the operator must examine each working section of the mine for proper ventilation, properly functioning seals and doors, examine and test the roofs and face and rib conditions in such working sections, examine active roadways, travelways, and belt conveyors on which miners are carried, approaches to abandoned areas, and accessible falls in such section for hazards. Coal carrying belt conveyors are to be inspected once a shift has begun.

The regulations provide for procedures in commissioning new mines or reopening abandoned mines. A new mine is limited to at most 20 miners at a time until a connection is made between the mine openings. Before the reopening of a mine which has been abandoned or declared inactive, an inspection by the MSHA is required.

(c) efforts are made to maintain the stability of the ground where work is done;

In addition to requiring underground coal operators to submit roof control plans addressing hazards in this area, the regulations provide that operators of surface mines are required to employ mining methods which "maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned tasks."[35] Similarly, conditions which would create a "fall-of-material hazard" at or near the perimeter of a pit or quarry must be corrected.[36] Further, ground conditions which create hazards to persons must be taken down or supported prior to other work or travel being permitted in the affected area. Additional regulations pertain to scaling locations and tools, rock fixtures, and precautions for secondary ground breakage operations.

The regulations also require that a designated person must "examine, and where applicable, test ground conditions in areas where work is to be performed prior to commencing, after

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[35] 30 C.F.R. § 56.3131.

[36] 30 C.F.R. § 56.3131.

blasting, and as ground conditions warrant during the work shift."[37] These operators are further required to inspect highwalls and banks adjoining travelways weekly or more often if changing ground conditions warrant. The regulations for underground mine operators are almost identical.

(d) wherever practicable, two separate means of egress to the surface from every underground workplace are provided for;

The Act and regulations require that "at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways".[38] These escapeways are to "be provided from each working section continuous to the surface escape drift opening or continuous to the escape shaft or slope facilities on the surface."[39]

(e) the monitoring, assessment and regular inspection of the working environment to identify various hazards to which the workers may be exposed;

As explained in greater detail in subsection (b) above, the Act requires both pre-shift and on-shift examinations of working places to be conducted in underground coal mines. Pre-shift examinations must be performed within three hours of the beginning of any shift and before any oncoming shift member is permitted to enter the underground mine. The person conducting the inspection must examine for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at established locations.

On-shift examinations require that a certified person designated by the operator examine each section where coal is produced and any area where mechanized mining equipment is being installed or removed during the shift. Similar to the pre-shift examinations, the on-shift examinations "check for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in a proper direction."[40] Also, in coal mines a certified person is required to "examine for hazardous conditions along the belt conveyor haulageway where a belt conveyor is operated."[41]

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[37] 30 C.F.R. §§ 56.3401; 57.3401.

[38] 30 U.S.C. § 877(f)(1); 30 C.F.R. § 75.380; see also 30 C.F.R. § 57.11050(a).

[39] Id.

[40] 30 C.F.R. § 75.362(a)(1).

[41] 30 C.F.R. § 75.362(b).

For surface coal mines, the regulations require a certified person to perform a daily examination of each active working area and surface facility.[42]

(f) adequate ventilation for all underground work areas;

Employers are required under the Act to ventilate all coal mines by mechanical equipment approved by the MSHA. The equipment must be examined daily with a record kept of such examinations. The MSHA have set percentages for minimum amounts of oxygen and ceiling amounts for carbon dioxide and other noxious or poisonous gases. Also, the current of air must be of sufficient volume and velocity "to dilute, render harmless, and to carry away, flammable, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes."[43] There are further requirements regarding the maintenance of brattice and other approved devices to ensure proper ventilation. As part of the mandatory operator inspection of each mine area, the examiner must test each working section for methane and adequate oxygen.

(g) safety plans and procedures are implemented for "zones susceptible to particular hazards";

Recognizing the numerous hazards inherent in mining, the Act provides for specific requirements in the inspection, maintenance, and improvement of various suspectable zones. For instance, underground coal mine employers are required "to carry out on a continuous basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system."[44] This roof control plan must be approved by the MSHA. MSHA has promulgated standards which address other particular mining hazards, including in 30 C.F.R. the following: clean-up of coal and coal dust (75.400-2), use of nonpermissible blasting units or the firing of more than 20 shots in a round (57.1321(a)), use of equipment and machinery (57.14200-219) and traffic safety (57.9100). As discussed above, procedures to ensure proper ventilation and to test for potentially explosive gases are also required. Further, if any condition is determined to violate a mandatory health or safety standard or any condition which is hazardous to persons who may enter such an area the examiner is required to post a "DANGER" sign, conspicuously at all points which persons entering the hazardous area would pass, and must notify the operator. Also, at least once during each shift at a coal-producing mine, or more often as dictated by safety reasons, "each working section shall be examined for

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[42] See 30 C.F.R. § 77.1713.

[43] 30 U.S.C. § 863(b).

[44] 30 U.S.C. § 862(a).

hazardous conditions by certified persons designated by the operator to do so."[45] Any such conditions are required to be corrected immediately.

(h) measures are undertaken "to prevent, detect and combat the start and spread of fires and explosions";

The Act provides for extensive testing for and prevention of high levels of methane at the work face of a mine. Employers may be required to install a methane monitor, to detect concentrations of methane, on "any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine".[46] An MSHA inspector is required to ensure that each monitor deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by the MSHA representative. Inspections for methane and for oxygen deficiency and other dangerous conditions in idle and abandoned areas are required by certified persons and means approved by the MSHA. These inspections must be provided prior to any worker entering the specific area of the mine. For underground coal and gassy metal and non-metal mines, the Act and implementing regulations require the use of only approved (permissible) electric equipment in certain areas as well as approved explosives and blasting machines.

With regard to fire protection, the Act requires that each coal mine "be provided with suitable firefighting equipment adapted for the size and conditions of the mine."[47] Also, inspections are required after any blasting is done to determine if a fire has been ignited. Underground storage places for lubricating oil and grease is required to be of fireproof construction. Similarly, the Act requires that "[u]nderground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas."[48] Also, the Act provides for supervision and fire precautions for underground welding, cutting or soldering with arc or flame. Fire suppressive devices, as prescribed in the regulations, must be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the MSHA must be used in the hydraulic systems of such equipment. Additionally, the Act requires "[d]eluge-type water sprays or foam generators automatically activated by a rise in temperature, or other no less effective means approved by the

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[45] 30 U.S.C. § 863(e).

[46] 30 U.S.C. § 863(l).

[47] 30 U.S.C. § 871(a).

[48] 30 U.S.C. § 871(c).

Secretary of controlling fire, . . . be installed at main and secondary belt-conveyor drives."[49] Underground conveyor belts are required to meet regulations as to flame-resistant conveyor belts.

The regulations also provide for specific guidelines for fire prevention and control. Employers are required to post warning signs prohibiting smoking or open flames near combustible liquids or gases and to provide fire fighting equipment, "[s]trategically located, readily accessible, plainly marked, and maintained in fire-ready condition", at each mine.[50] Further, regular inspections are required for fire equipment according to prescribed schedules. Mine operators must also establish emergency fire fighting, evacuation, and rescue procedures. Fire fighting drills must be held every six months.

(i) "where there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location."

If during a pre-shift examination a hazardous condition is detected which creates an imminent danger, the operator is required to "withdraw all persons from the area affected . . . until the danger is abated."[51] Similar safeguards are provided for in the weekly ventilatory checks for hazardous conditions. Specifically, high levels of methane would necessitate the evacuation of all persons, other than those required to alleviate, investigate or witness the problem, and all electric power would be cut off from the particular section of the mine until the air contained a safe level of methane. Further, where hazardous conditions, identified during an on-shift examination, cannot be corrected immediately, imminent danger is created. Under these circumstances, all but excepted personnel are to be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Also, standards require the use of automatic fire sensor and warning device systems, which when they alarm cause miners to evacuate.

The United States appears to be in compliance with all the sections of Article 7. One concern may be in subpart (d) requiring two exits from an underground mine. It appears that the Act and regulations do allow for an exception to the general rule providing for two separate means of egress to the surface for slope and shaft sinking operations, where only one escapeway is required. However, this concern does not appear to be

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[49] 30 U.S.C. § 871(f).

[50] 30 C.F.R. §§ 56.4200(b)(2); 57.4200(b)(2).

[51] 30 C.F.R. §§ 56.18002(c); 57.18002(c).

significant in that subpart (d) qualifies its language with "whenever practicable" which would allow for the exception set out in the regulations for slope and shaft sinking operations.

Article 8

Article 8 provides that the employer "prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters."

The regulations provide for instruction and approval of an emergency response plan by all coal mine operators. Mine operators are required to establish emergency fire fighting, evacuation and rescue procedures.

Coal mine operators are required to adopt a program for "instruction of all miners in the location and use of fire fighting equipment, location of escapeways, exits and routes of travel to the surface, and proper evacuation procedures to be followed in the event of an emergency."[52] The program must be submitted for approval by the District Manager of the Coal Mine Health and Safety District in which the mine is located. The instruction plan must "include a specific fire fighting and evacuation plan designed to acquaint miners on all shifts."[53] This program must be given to all miners annually and to newly employed miners within six months of the date of employment. Escape and evacuation plans are also required for underground metal and non-metal mines.[54]

Article 9

Article 9 provides for employer responsibilities to "workers exposed to physical, chemical or biological hazards." Specifically, employers are required to inform workers "of the hazards associated with their work, the health risks involved and relevant preventive and protective measures." Moreover, employers are obligated to take "appropriate" actions to "eliminate or minimize" the resultant risks from hazard exposure. The employers, where "adverse conditions cannot be ensured by other means," are also required to provide "suitable protective equipment, clothing as necessary and other facilities" as defined by national laws and regulations. Further, employers must supply injured workers "with first aid, appropriate transportation from the workplace and access to appropriate medical facilities."

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[52] 30 C.F.R. § 75.1101-23(a).

[53] 30 C.F.R. § 75.1101-23(a)(1).

[54] See 30 C.F.R. § 57.11053.

The Act and regulations provide for engineering control of occupational disease causing dusts at the source. These protections would prevent the incidents of silicosis, pneumoconiosis and asbestosis. Similarly, the requirement for high ventilation rates and continued monitoring and maintenance of the system ensures adequate dilution and extraction of explosive gases underground.

The Act expressly provides that "[a]ny mandatory health or safety standard . . . shall prescribe the use of labels or other appropriate forms of warnings as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure."[55] The Act further requires, where appropriate, that the standards shall prescribe "suitable protective equipment" along with monitoring of the hazardous conditions to insure the maximum protection of the miners.[56]

The regulations provide for extensive protections and precautions regarding safety in the mines. Specific requirements for first aid, safety training and emergency medical assistance are within the regulations for both metal and non-metal and coal mines operating on the surface and underground.

Article 10

Article 10 requires that employers, in an effort to protect the working miners, provide:

(a) free training and retraining programs, and comprehensive instructions to workers on safety and health matters as well as on work assigned;

The Act requires that every operator of a mine "have a health and safety training program which shall be approved by the Secretary."[57] This training is at no cost to the miners, usually held during working hours.

(b) adequate supervision and control on each shift to secure safe operation of the mine, in accordance with national laws and regulations;

The regulations provide for specific certification of mine foremen, assistant foremen and pre-shift examiners. Moreover, as

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[55] 30 U.S.C. § 811(a)(7).

[56] Id.

[57] 30 U.S.C. § 825(a).

discussed above, requirements regarding mine inspections and safety and health provisions insure a high level of supervision within the mines.

(c) a system allowing for the accurate tracking of names and probable locations of each underground miner can be ascertained at any time;

The Act provides that each operator of an underground coal mine "establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard."[58] A check-in check-out system is also required in underground metal and non-metal mines.

(d) that "all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken";

The Act also requires that all accidents must "be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence."[59]

(e) that a report, as defined by national laws and regulations, be filed with the appropriate authority on accidents and dangerous conditions.

The Act requires that each operator "establish and maintain such records, make such reports, and provide such information, as the Secretary . . .may reasonably require from time to time to enable him to perform his functions under the Act."[60] The regulations have specific reporting requirements discussed in full in Article 5.

Article 11

Article 11 requires, consistent with national laws and regulations, that employers ensure "regular health surveillance of workers exposed to occupational health hazards specific to mining."

Initially, the regulations require that miners working at underground coal mines or at surface work areas of underground coal mines and have evidence of the development of pneumoconiosis

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[58] 30 U.S.C. § 877(p).

[59] 30 U.S.C. § 813(d).

[60] 30 U.S.C. § 813(h).

have the option to work in an area of the mine where the average concentration of respirable dust is below a certain standard. The rule allows for exercise of the option without any effect to rate of pay or potential wage increases. An operator is, therefore, required to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift the affected miner would be exposed. Dust sampling tests must be conducted bimonthly with approved samplers. Upon receipt of evidence that an operator has tampered with an approved sampler, the MSHA brings swift enforcement action, which can in appropriate cases include criminal prosecution through the Justice Department, against the operator. Regulation health standards require exposure monitoring of air quality, radiation, and physical agents and generally address other health hazards from mining.[61]

Although, it appears that the United States complies with this Article, the MSHA believes that any information, such as details and results of such surveillance, should be made available to the workers and any representative of the miners as well as to the MSHA.

Article 12

Article 12 assigns primary responsibility to the "employer in charge of the mine" for implementation of safety and health measures, where two or more employers are at the same mine. This provision does not relieve other employers from safety and health responsibility for their workers.

The Act defines "operator" as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine."[62] Thus under the Act, both a production operator and an independent contractor utilized by such production operator are subject to its terms and provisions, and each can thus be the subject of an enforcement proceeding. In enforcing the Act, the Mine Safety and Helath Administration (MSHA) holds the production operator ultimately responsible for all activities occurring at the mine, whether performed by its own employees or those of an independent contractor. Notwithstanding this ultimate responsibility of the production operator, MSHA's enforcement policy provides that it may, in its discretion, cite either the production operator, the independent contractor, or both for violations committed by the contractor, and this discretionary authority has been upheld by the courts. See, e.g., Bituminous Coal Operators' Association v. Secretary of Interior, 547 F.2d

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[61] See 30 C.F.R. Parts 56-58.

[62] 30 U.S.C. § 802(d).

240, 246-47 (4th Cir. 1977); Mingo Logan Coal Co. V. Secretary of Labor, (4th Cir. No. 97-1392; unpublished opinion 1/8/98).

In order to assure the compatability of the aforementioned MSHA discretionary enforcement authority with the provision in Article 12 which assigns primary responsibility to the employer in charge of the mine, by letter dated February 11, 1999, the Department of Labor put the following question to the ILO:

> We understand that Article 12 of Convention 176 concerning safety and health in mines does not mean that the employer in charge shall always be held responsible for the acts of an independent contractor.

In its response on _____, the ILO opined that :

> The primary responsibility of the employer in charge of the mine does not mean that the employer will always be held responsible if the responsibility could be attributed to another, e.g. the independent contractor. But the primary responsibility means that the employer in charge of the mine could be held responsible. (Emphasis in original)

Copies of the correspondence between the Department of Labor and the ILO are attached to the TAPILS Report accompanying this Statement of Law and Practice.

B. Rights and Duties of Workers and Their Representatives

Article 13

Article 13 sets out worker's rights as provided for in the national laws and regulations referred to in Article 4.

1. Workers have the following rights:

(a-b) to report accidents, dangerous occurrences and hazards to the employer and the competent authority;

to request and obtain inspections and investigations by the employer and the competent authority where there is cause for concern based on safety and health grounds;

The Act expressly grants to the representative of the miners, or a miner where there is no such representative, the right to obtain an immediate inspection by notifying the Secretary, or his authorized representative, where there is "reasonable grounds to believe that a violation of this Act or a mandatory health or

safety standard exists, or an imminent danger exists".[63] Upon receipt of written notification, the MSHA authority provides a special inspection as soon as possible. The operator must also be notified, immediately if there is imminent danger or no later than the time of the inspection in other cases.

While the Act (but not the Convention) provides that the notification to the Secretary shall be reduced to writing and signed by the representative (or miner if not represented), and an identity-redacted copy thereof provided to the operator, failure to sign a complaint does not invalidate an inspection conducted by MSHA. See Secretary of Labor v. Aloe Coal Co., FMSHRC Nos. PENN 91-40 and 41 (1993); Secretary of Labor,MSHA v. Southern Ohio Coal Co., FMSHRC No. LAKE 79-24 (1980); S. Rep. No. 181, 95th Cong., 1st Sess. (1977), reprinted in 1977 U.S.C.C.A.N. 3401, 3429.

Since Article 13 does not require a miner or his representative to file a written notice, nor that an operator be served with a copy thereof, in its letter dated February 11, 1999, the Department also put the following inquiry to the ILO:

> Convention 176 does not with specificity address the[se] matters ... and thus it is our understanding that ratification of Convention 176 would neither alter nor abrogate any requirement mandated by statute ... that the miner ... must sign the notice, or that a copy of a written notice must be provided to the operator.... Is our understanding correct?

In its response, the ILO noted that this provision of Article 13 must be read in the context of paragraph 3 of the Article under which procedures for the exercise of this right shall be specified by (a) national laws and regulations and (b) through consultations between employers and workers or their representatives. The ILO then concluded by stating that:

> A requirement under national laws and regulations that a notice be made in writing with a copy being sent to the operator no later than at the time of the inspection, the name of the miner being redacted, would not appear to be in conflict with the provisions of the convention.[64]

(c) to know and be informed of workplace safety hazards;

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[63] 30 U.S.C. § 813(g)(1).

[64] A copy of the exchange of correspondence between the Department and the ILO on these matters is attached to the accompanying TAPILS Report.

The Act provides that "[a]ny mandatory health or safety standard . . . shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure."[65]

(d) to obtain information relevant to their safety and health from their employer or the competent authority;

The regulations provide that records of pre-shift and on-shift examinations be retained for one year. Review of these records by representatives of miners is permitted. The records must note hazardous conditions and their locations found by the examiners during each examination and the results of the air and methane measurements. Also, the Act requires that the representative of miners receive a copy of any notification from the MSHA to the mine operator of penalty assessments for violations of the Act or regulations.[66] Further, the MSHA penalty regulations permit the miners' representative to discuss each citation or order with the MSHA and to submit additional information.[67]

(e) to remove themselves from any location where circumstances appear, with reasonable justification, to pose a serious danger to their safety and health;

There is nothing in the Act or its regulations which would preclude a miner from leaving a dangerous mine area based on a reasonable safety or health concern, although there is no express statutory provision which grants a miner the absolute right to refuse work under such conditions. However, the FMSHRC and the courts[68] have inferred a right of work refusal where danger is perceived, based upon the statutory protection of miners from discrimination or reprisal for making complaints to the MSHA or the mine operator regarding safety and health violations.[69] This result comports with the legislative history of the Act as demonstrated by the following statement in the Senate Report:

> While ... the operator ... has the ultimate

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[65] 30 U.S.C. § 811(a)(7).

[66] See 30 U.S.C. § 815(a).

[67] See 30 C.F.R. § 100.6.

[68] Cooley v. Ottawa Silica Co., 6 FMSHRC 516, 519-21, aff'd, 780 F.2d 1022 (6th Cir. 1985); Gilbert v. FMSHRC, 866 F.2d 1433, 1439 (DC Cir. 1989).

[69] See 30 U.S.C. § 815(c).

> authority to operate the mine, the Committee recognizes that creation and maintenance of a safe and healthful working environment is not the task of the operator alone. If the purposes of this legislation are to be achieved, the effort must be a joint one, involving the miner and his representative as well as the operator. Accordingly, Subsection (b) of Section 101 (30 U.S.C. 811(b)) establishes the miner's duty to comply with the Act and its requirements. It is the intention of the Committee that this duty will foster the necessary cooperation between miner and operators which the Committee believes must be encouraged if the nation's mines are to be made truly safe.

S. Rep. No. 181, 95th Cong., 1st Sess. (1977), reprinted in 1977 U.S.C.C.A.N. 3401, 3418.

(f) to collectively select safety and health representatives.

There is nothing within the laws of the United States which would prevent the selection of safety and health representatives consistent with a collective bargaining agreement. A representative of miners would negotiate such a term in the regular bargaining agreement with an operator.

2. The safety and health representatives, referenced in 1(f), shall, consistent with the national laws and regulations, have the following rights:

(a) to represent workers on all safety and health matters;

(b) to participate in all inspections and investigations with the employer or the competent authority and to monitor and investigate safety and health matters;

(c) to have recourse to advisers and independent experts;

(d) to consult with the employer on safety and health policies and procedures;

(e) to consult with the competent authority; and

(f) to receive notices of accidents and dangerous occurrences.

As discussed in several sections within this report, a representative of miners is guaranteed the right to participate in certain inspections and investigations of the mine areas, to receive notices of accidents and dangerous occurrences and of citations issued for violations of the Act or regulations, and to consult with the MSHA on safety and health matters. In addition,

specific conditions and rights providing even greater protections are often negotiated within collective bargaining agreements between employers and unions.

3. Procedures for the exercise of the above rights shall be prescribed in national laws and regulations and through consultations between employers and workers and their representatives.

In the United States, the operators and miners are bound initially by the Act and its regulations and also by any labor agreement negotiated within the parameters set by the National Labor Relations Act.

4. National laws and regulations must prohibit discrimination or retaliation based on the exercise of these rights.

The Act prohibits any person from discharging or in any way discriminating against a miner, a representative of miners or a new applicant for employment in an effort to interfere with the exercise of statutory rights or in retaliation related to the filing of a complaint under the statute. Complaints based on such discrimination or retaliation are filed with the Secretary under specific procedural rules set out in the Act, and are processed with high priority by MSHA.

Article 14

Article 14 requires that trained workers must comply with the "prescribed safety and health measures". Similarly the workers are "to take reasonable care for their own safety and health" and any other affected person. It is provided that the worker alert a supervisor if he cannot correct a potential safety or health risk himself and to cooperate with the employer in efforts to abide by the provisions of the Convention.

Under the Act, miners, as well as mine operators, have primary responsibility to prevent the existence of unsafe and unhealthful conditions in mines and to comply with mandatory safety standards.[70] The Act also prohibits workers from willfully violating the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters, and renders such workers subject to civil penalty of up to $250 for each occurrence.[71] Further, the regulations state that intoxicating beverages or narcotics are not permitted or to be used around the mines. The Act expressly provides that miners shall cooperate with operators and others in preventing unsafe

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[70] 30 U.S.C. 801(e) and (g)(2).

[71] 30 U.S.C. 820(g).

and unhealthful mining conditions, and in the promotion of effective safety programs.[72] As the Act is a strict liability statute, employee violations of safety and health rules or misconduct is not a defense to a citation for violations of the Act or implementing regulations (except smoking). However, such employee conduct may be considered in evaluating an operator's negligence, which is a factor considered in assessing civil penalties.

C. Cooperation

Article 15

Article 15 states that "[m]easures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines."

The United States, through the MSHA, currently encourages exchange between employers and representatives of workers to meet in efforts to further mine safety and health. For further discussion of the role of operator-miner cooperation, see the discussion of Articles 13 and 14 above.

Part IV. Implementation

Article 16

Article 16 requires that members take all necessary measures to ensure enforcement of the provisions of the Convention and to provide the necessary resources for supervising the application of the measures taken in pursuance of the Convention.

The Act provides for monetary penalties to a mine operator where a violation occurs of a mandatory health or safety standard or other provision of the Act. The MSHA may assess a civil penalty up to $10,000 for each such violation. Additional penalties accrue on failure to correct a violation for which a citation has been issued. The willful violation of certain provisions allows for these actions to constitute a criminal offense punishable by fine and possibly imprisonment.

The responsibilities of the Secretary under the Act to inspect and investigate mine activities sufficiently covers the supervision of this Convention's application. This is extensively discussed in Article 5.

Part V. Final Provisions

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[72] 30 U.S.C. 801(e) and (g)(3-4).

Article 17

The formal ratification of the Convention shall be communicated to the Director-General of the ILO for registration.

Article 18

The Convention will be binding on all members who have registered their ratification of this Convention with the Director-General once two members have registered. Thereafter, the Convention will become binding on members twelve months after their registration. Convention 176 went into effect on May 6, 1998.

Article 19

Under section one of this Article, a member may denounce the entire Convention ten years after the Convention became binding on the member. Such denunciation takes effect one year after it is communicated to the Director-General.

Under section two, if a member does not denounce the Convention within one year after the Convention has been binding upon the member for ten years, the Convention will continue to be binding upon the member for an additional ten years.

Article 20

The Director-General shall communicate to the members the registration of all ratifications and denunciations and the dates when those events will come into effect.

Article 21

The Director-General shall communicate all ratifications and denunciations of the Convention to the Secretary-General of the United Nations.

Article 22

The Governing Body of the ILO shall present a report on the Convention and whether it should be revised in whole or in part at such time when the Governing Body considers such report necessary.

Article 23

If a new Convention is adopted by the conference, revising this Convention in whole or in part, then ratification of the new Convention will mean automatic denunciation of this Convention unless the new convention provides otherwise. This Convention will remain in force for those members who have adopted it but have not accepted the revised Convention.

Article 24

The English and French versions of the Convention are equally authoritative.

Conclusion

Convention 176 concerning Mine Safety and Health provides for a broad array of precautions, inspections and assurances from the competent authority, the mine operator and the miners themselves. The United States, through the provisions of the Federal Mine Safety and Health Act of 1977 and its implementing regulations, appears to comply with the requirements contained in Convention 176. Such minor concerns as might have been noted in the foregoing Statement do not appear to constitute significant obstacles to ratification of this Convention.