



Governing Body

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Legal Issues and International Labour Standards Section

LILS

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DRAFT MINUTES

Legal Issues and International Labour Standards Section

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1. The Legal Issues and International Labour Standards Section was held on Friday, 25 October 2013. Mr Corres (Government, Argentina) chaired the Section, as assigned by the Chairperson of the Governing Body. Mr Syder was the Employer coordinator, and the Worker Vice-Chairperson of the Governing Body, Mr Cortebeek, was the Worker spokesperson.

Legal Issues Segment

First item on the agenda

Standing Orders of the International Labour Conference: Proposed amendments arising from the Conference reform proposals of the Governing Body (GB.319/LILS/1(Rev.1))

2. *A representative of the Director-General* (Legal Adviser) said that, following informal consultations held in September, the document had been revised to leave open the question of the Conference session at which the amendments would be adopted. Some of the proposed amendments had already been the subject of comments in the Working Party on the Functioning of the Governing Body (WP/GBC) and it had been suggested that the approval of proposed amendments and their submission to the International Labour Conference could be postponed to a later session so that all amendments arising from the current Conference reform process could be adopted together. The amendments submitted, in addition to any agreed further changes and Office amendments on certain technical issues, would be presented in a new document taking into account any further decisions arising from WP/GBC discussions.
3. *The Worker spokesperson* considered that, as many aspects of the reform were still under discussion, it would be better to defer the adoption of the amendments. If necessary, the agreed changes could be implemented by suspending the relevant provisions of the Standing Orders. Regarding the opening sitting, the Workers supported the proposed amendments to article 76, which avoided the artificial splitting of the sitting into two. They also concurred that the Director-General's Report should be devoted at every session to a social policy theme of current interest chosen by the Director-General, on the understanding that programme implementation and related issues would be covered in the report of the Governing Body Chairperson. Regarding the World of Work Summit, the group disagreed that there was consensus on the need to amend the Standing Orders. Despite mixed results, the Summit should be tested again before drawing any conclusions. The same applied to the interactive debates. Consequently, his group did not support the inclusion of paragraphs 4 and 5 of article 12. Nor did it support the proposed amendments to article 23 to allow for the deferred publication of the *Provisional Records*, as amendments should first be supported by a clear assessment of the resulting savings. Regarding the non-reactivation of the Resolutions Committee, the Workers favoured the establishment of a Selection Committee subcommittee in the event of the submission of resolutions on matters not included on the Conference agenda, and retaining the existing special rules for the discussion of resolutions. The Workers supported subparagraph (b) of the draft decision but proposed replacing subparagraph (a) by: "requests the Office to take note of the amendments regarding which consensus has been reached in order to propose a complete set of amendments to the International Labour Conference for adoption once the process of reform is completed; and".

4. *The Employer coordinator* said that simplification, modernization, clear cost benefit and reflection of the current agreed practice should characterize the approach to changes to the Standing Orders. Regarding article 76, he considered that the proposal of publishing a document 24 hours in advance, setting out the proposed Standing Orders suspensions, did not simplify the practice. Instead, he suggested deleting the entire second sentence of the article as the first sentence contained sufficient safeguards. His group endorsed the amendments to article 12 on the plenary period and the World of Work Summit, and to article 23 on *Provisional Records*, and also supported both amendments proposed by the group of industrialized market economy countries (IMEC). Concerning the non-reactivation of the Resolutions Committee, the Employers' group was unconvinced of the proposal to refer the resolutions to a subcommittee of the Selection Committee. Firstly, resolutions relating to urgent or formal matters not on the agenda could still be submitted to the Conference and dealt with by the Selection Committee, another committee or the plenary, an approach that had not created problems since 2006. Secondly, no resolutions on matters not on the agenda had been submitted since the suspension of the Resolutions Committee in 2006. Given the debate on reducing the length of the Conference and the broad consensus on non-reactivation of the Resolutions Committee, a new form of Resolutions Committee or other potentially costly mechanism should be avoided. All that remained was to clarify that the Selection Committee would be competent. Subject to their proposal on article 76, the Employers endorsed the draft decision and the Workers' proposed amendment to paragraph 26(a).
5. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Costa Rica considered that the Working Party should wait until it had covered all the points for discussion before adopting amendments to the Standing Orders. GRULAC supported the amendment to article 76 and suggested that proposed Standing Orders suspensions should be notified by email to the Workers' and Employers' groups and to the regional government coordinators at the same time as their online publication. GRULAC supported the point under paragraph 7 of the document, on the understanding that the report of the Chairperson of the Governing Body would contain information on programme progress and implementation provided by the Director-General. In relation to paragraph 8 of the document, the group doubted whether panels were a suitable forum to consider the Report of the Director-General, unless it were specified that such panels would be held continuously and in the same room, to avoid losing the unity and coherence of those discussions. In addition, particular care had to be taken in selecting moderators, considering that as non-members of accredited tripartite delegations they would in principle not be entitled to participate in those or any other Conference meetings. Such meetings should respect delegates' and technical advisers' right to intervene. The proposals on the World of Work Summit were supported with the same provisos. Regarding the amendments to the *Provisional Record* requirements, the group suggested that, at the same time as the *Provisional Record* was posted online, the groups and regional coordinators should be notified of the timeframe for amendments. It was also proposed to further amend article 23(3) by adding the words "or the text" after "recordings". GRULAC supported the non-reactivation of the Resolutions Committee and the examination of resolutions by the Selection Committee. The current composition of the Selection Committee, which coincided with the composition of the Governing Body, should be maintained, including an identical or similar number of deputy members. GRULAC supported the decision point under paragraph 26(a), subject to its subamendment to article 23 and on the understanding that the Conference would only adopt the amendments once overall consensus had been reached. Accordingly, the amendments would not be included in the agenda of the 103rd Session of the Conference (2014).
6. *Speaking on behalf of IMEC*, a Government representative of Canada supported the implementation of the agreed Conference reform measures and welcomed the proposal to abolish the Resolutions Committee. While her group agreed to the amendment under

paragraph 5 of the document, it believed that it was not essential and that the opening sitting could instead be shortened by reducing the speeches made by Committee members. IMEC was not convinced by the proposal to enshrine a World of Work Summit into the plenary, but agreed to introduce the possibility of interactive debates such as panel discussions into the Conference Standing Orders. IMEC was concerned by the removal of the legal requirement to submit a biennial Programme Implementation Report, given its importance to the Conference that decided on the programme and budget. IMEC could only agree with the proposed deletions in article 12 if an additional paragraph was added with the wording: “Every two years, a programme implementation report of the Director-General on a completed financial period is to be submitted to the Conference. If such a programme implementation Report of the Director-General to the Governing Body is attached to the report of the Chairperson of the Governing Body, no special Report of the Director-General to the Conference is necessary.” IMEC agreed in principle with the amendment of article 23 of the Standing Orders, but wished to replace the word “delegate” with “person” in paragraph 3, since not only delegates addressed the plenary. With these further amendments, IMEC supported decision point 26(a) as well as the amendment proposed by GRULAC.

7. *Speaking on behalf of the Africa group*, a Government representative of Angola indicated that his group, following long discussions, supported the draft decision.
8. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of Australia said that his group did not support the Workers’ amendment, but that it approved the draft decision in the document, subject to the amendments by IMEC and GRULAC.
9. *The Worker spokesperson* agreed to the amendments proposed by GRULAC and the amendment to article 23 proposed by IMEC. However, in relation to article 12, it would be premature to take a decision before consensus had been reached by the Working Party.
10. *A Government representative of Switzerland* supported decision point 26(a) and the amendments proposed by IMEC and GRULAC, but could not support the amendment proposed by the Workers.
11. *The representative of the Director-General (Legal Adviser)* said that the Office would come back to the Governing Body in March 2014 with a series of proposed amendments including those on which there was now tripartite consensus. In response to a request for clarification, she explained that the Conference could always suspend the Standing Orders to implement proposals on which consensus had already been reached, as had been done in the past.

Decision

12. The Governing Body:

- (a) *took note of the discussions on the document and deferred further consideration of this matter until its 320th Session (March 2014); and*

- (b) requested the Office to prepare for its 320th Session (March 2014) a set of proposed amendments as necessary to implement a new procedure for the discussion of resolutions relating to matters not included in an item placed on the agenda of the Conference, taking into account the preferences expressed by the Governing Body during the debate.*

(GB.319/LILS/1(Rev.1), paragraph 26, as amended.)

Second item on the agenda

Privileges and immunities of the International Labour Organization: Follow-up

Question of privileges and immunities in relation to officials of the secretariats of the Employers' and Workers' groups of the Governing Body

(GB.319/LILS/2/1)

13. *A representative of the Director-General (Legal Adviser) explained that the analysis contained in the document concluded that members of the secretariats of the Employers' and Workers' groups, when entrusted with a mission by the Organization, enjoyed the status of experts on mission under the Convention on the Privileges and Immunities of the Specialized Agencies (the 1947 Convention) and its Annex I relating to the ILO. It was important that the decision entrusting the secretariat members with their mission be sufficiently explicit, and that their individual nomination be officially recorded so that there could be no doubt about their identity. The document did not propose to increase existing privileges and immunities but simply invited the Governing Body to take note of the result of the legal analysis of the 1947 Convention with a view to facilitating the implementation of the legal protection provided therein. It also urged ILO Members that had not yet done so to accede to the Convention and apply its Annex I or otherwise provide the same level of legal protection.*
14. *The Employer coordinator noted that the document helped the Governing Body to better understand the vital role of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) for the operation of tripartism in the ILO's bodies and meetings, and the functioning of the Organization as a whole. The Employers agreed with the legal assessment and expected that those Members that had not yet acceded to the 1947 Convention and its Annex I, or provided through other ways the same level of protection, would do so in the very near future. They further stated that IOE and ITUC officials were, as experts on mission, accountable to the Organization only via their respective Employers' and Workers' groups in the ILO and that, therefore, they enjoyed autonomy and instruction freedom from the Director-General. The Employers supported all points for decision and agreed with the suggestion to provide IOE and ITUC officials performing missions for the ILO with a certificate following the model used for members of commissions of inquiry and other high-level missions as evidence that they were entitled to appropriate privileges and immunities.*
15. *The Worker spokesperson took note of the protection provided under the Convention and supported the point for decision, highlighting the essential role of the secretariats of the Employers' and Workers' groups for the full realization of tripartism at the ILO. Their*

protection required the commitment of Members to accession to the 1947 Convention or, at least, the acceptance of the application of the Convention's provisions through bilateral agreement with the ILO. The Workers called on member States that had yet to do so to accede to the Convention and requested the Director-General to take measures to facilitate the legal protection of members of the secretariats of the Employers' and Workers' groups as experts on mission.

16. *Speaking on behalf of IMEC*, the Government representative of Canada agreed that under certain conditions members of the IOE and ITUC enjoyed certain privileges and immunities under the 1947 Convention when formally entrusted with a particular ILO task by an organ of the Organization. For the IOE and ITUC to be able to directly nominate their officials participating in ILO missions, the ILO decisions entrusting a mission would need to provide for both the participation of IOE and ITUC officials and the delegation of authority to the IOE and ITUC to nominate the specific persons. Individual nominations would need to be officially recorded and the names of those directly nominated would have to be communicated to the Director-General. Provided that an up-to-date list of the experts on mission would be maintained by the Office, IMEC supported the points for decision.
17. *Speaking on behalf of the Africa group*, a Government representative of Angola stated that the 1947 Convention did not provide any protection or privileges and immunities to representatives of employers' and workers' organizations. However, when undertaking the functions of the secretariats of the Employers' or Workers' groups of the ILO, they acted on behalf of the Organization and benefited, therefore, from the privileges and immunities provided to experts entrusted with official missions in accordance with Annex I of the Convention. He requested that the decision be postponed until the following session of the Governing Body, to allow the Government members time to consult with their capitals.
18. *Speaking on behalf of GRULAC*, a Government representative of Costa Rica noted that IOE and ITUC officials, albeit not ILO officials, performed an important task as secretariats of the Employers' and Workers' groups during the Governing Body and the International Labour Conference. He noted that IOE and ITUC officials did not enjoy, as such, any privileges and immunities. However, when entrusted with official ILO missions, they could benefit from certain privileges and immunities for the duration of the mission and in countries that had adhered to the 1947 Convention and its Annex I, or had entered into bilateral agreements providing equivalent protection. As experts on mission, they would act as members of an official mission, be accountable to the Organization and not receive instructions from the IOE or ITUC. In order to align the points for decision with the request made to the Office by the Governing Body at its 313th Session, GRULAC proposed two amendments adding "defined in a tripartite manner" after "ILO official missions".
19. *A representative of the Government of India* noted that a large number of ILO member States had not ratified the 1947 Convention and did not provide an equivalent legal framework. He wondered how legal protection could thus be uniformly guaranteed. He also raised the question as to whether all members of the secretariats of the ITUC and IOE would automatically benefit from the privileges, or if they would be specific to each mission, and whether a member of an ILO mission who was a member of another organization such as an NGO would have the same immunities. Consequently, he proposed deferring the agenda item until March 2014.
20. *The Employer coordinator* said that he did not object to the wording of the amendment proposed by GRULAC but could not accept the rationale behind it.

21. Similarly, *the Worker spokesperson* stated that not all missions were defined and decided by the three constituents, and sought clarification from the Legal Adviser on the matter.
22. *The representative of the Director-General (Legal Adviser)* noted that although the initial request by the Governing Body was to analyse the question related to missions defined “in a tripartite manner”, the document showed that that protection was applicable in general to any official mission entrusted by an organ of the Organization, including the Director-General. As to the questions raised by the Africa group and India, she explained that IOE and ITUC members entrusted with official missions were experts on mission. Their status was thus linked to two factors – their expertise and a request made to them to represent the Organization. It did not derive from their membership of the IOE or ITUC. She also recalled that the document before the Governing Body consisted in a legal analysis and that the Governing Body was only asked to take note of that analysis. The legal protection referred to was provided in pre-existing legal texts, notably the 1947 Convention and its Annex I, and the document did not add any further legal protection. A list of experts on mission, drawn up to facilitate their protection, could be maintained by the Office.
23. *Speaking on behalf of the Africa group*, the Government representative of the Congo reiterated the wish to have additional time to reflect and consult. However, having heard the explanation by the Legal Adviser and, as neither Employers nor Workers wished to postpone the discussion, the Africa group did not object to the adoption of the decision point, but wished that its position be reflected on the record.

Decision

24. *The Governing Body:*

- (a) *took note of the legal protection available under the Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I for members of the secretariats of Employers’ and Workers’ groups entrusted with the execution of an official mission for the Organization defined in a tripartite manner;***
- (b) *requested the Director-General to take the necessary measures to facilitate implementation of this legal protection in relation to official missions of the ILO defined in a tripartite manner; and***
- (c) *in order to ensure the effective recognition of such legal protection, again urged ILO Members that have yet to do so to accede to the Convention on the Privileges and Immunities of the Specialized Agencies and apply its Annex I or otherwise provide the same level of legal protection.***

(GB.319/LILS/2/1, paragraph 8, as amended.)

Identification document for Employer and Worker members of the Governing Body (GB.319/LILS/2/2)

25. *A representative of the Director-General (Legal Adviser)* introduced the document, recalling that the detailed proposal it contained responded to a specific request of the Governing Body formulated in March 2013. The purpose of the proposed identification document for Employer and Worker members of the Governing Body was to assist in identifying persons who were entitled to the rights already established by Annex I to the 1947 Convention and thus to facilitate the recognition of their status when travelling. It would not, however, replace the laissez-passer currently issued by Switzerland and the ILO, nor any passports or identity cards issued by national authorities. The Legal Adviser recalled that the Employer and Worker Vice-Chairpersons attended the ILO Regional Meetings outside their own region and participated in ILO-related high-level missions. An identification document would therefore assist them during such missions. If requested by the Governing Body, the Office could produce the cards at a minimum cost for the June 2014 elections of the Governing Body. A specimen of the card was shown to the Governing Body.
26. *The Worker spokesperson* supported the proposal of introducing an identification document for Employer and Worker members of the Governing Body, as proposed by the Office. With reference to paragraph 8 of the document, he said that the lack of protection of the Worker members of the Governing Body and delegates to the Conference in the countries of which they were nationals could seriously restrict their freedom of expression and the exercise of freedom of association rights. The Workers' group therefore requested the Office to prepare a document for the November 2014 session of the Governing Body containing a detailed analysis of the issue and proposing, if necessary, an amendment to Annex I of the 1947 Convention. The Workers' group supported the draft decision as amended with that additional request.
27. *The Employer coordinator* found that the proposal was clear and the proposed features and action appeared to be proportionate and reasonable. The group's only request was that the text proposed in paragraph 19 of the document for the back of the identification document should not include the words "including immunity of jurisdiction and inviolability of documents", as it was inappropriate to select those examples rather than others. The Employers' group strongly supported the draft decision and emphasized that it would be dismayed if the draft decision did not enjoy tripartite support, given that the card would be far more user-friendly, practicable and effective than the currently available document referred to in paragraph 2. It should have been created long ago.
28. *Speaking on behalf of IMEC*, a Government representative of Canada said that IMEC supported, in principle, the issuance of an identification card to the Worker and Employer members of the Governing Body. Nevertheless, paragraphs 7 and 8 of the document were misleading. While all ILO member States should recognize that the bearers of the card are ILO Governing Body members, IMEC agreed that the purpose of the card was to ensure that they enjoyed certain rights under Annex I to the Convention. As to the text to be printed on the back of the document, IMEC proposed that the words "including immunity of jurisdiction and inviolability of documents" should be replaced with "in States that are parties to this Convention and have accepted Annex I". IMEC suggested that, if card holders left the Governing Body before the end of their term, they should be required to return the card immediately and the Office could declare the cards invalid. The Office had to be informed immediately if a card was lost or stolen. While the identification card could only have declaratory value, it would improve application of the legal protection provided by the 1947 Convention to the Worker and the Employer Governing Body members in

States party to the Convention having accepted Annex I. The recognition of the identification document would be improved by broadly communicating its existence and design to all relevant actors. However, a concrete decision was first required on its design, the text it would contain and how it would be handled. IMEC therefore proposed that the draft decision should be amended to read: “The Governing Body requests the Office to present a revised proposal for the Governing Body member card for Worker and Employer members of the Governing Body at the 320th Session in March 2014.”

29. *Speaking on behalf of GRULAC*, a Government representative of Costa Rica noted that the identification card would be recognized only in States that had ratified the 1947 Convention or had signed a bilateral treaty with the ILO on the application of its provisions. Moreover, the relevant privileges and immunities would not be applicable in relation to the authorities of a State of which the person was a national. GRULAC proposed that a passport-size format should be used for the proposed identification document rather than a credit-card format, since it would otherwise be difficult to reproduce relevant provisions on the document. It was further proposed that an ILO telephone number should be printed on the card so that national authorities could rapidly verify its authenticity and validity. With regard to the text proposed in paragraph 19, GRULAC suggested that the words “El portador” should be replaced with “El titular” and that the words “including immunity of jurisdiction and inviolability of documents” be deleted. Subject to these comments, GRULAC supported the draft decision but requested that the Office present a document for the final approval of the Governing Body at its March 2014 session.
30. *Speaking on behalf of ASPAG*, a Government representative of Australia stated that the proposal still raised some outstanding issues and concerns, and that more time and information was needed for the group to consider the matter. Questions relating to travel and identification documents and to immunities and privileges were matters of State and required significant government consultation among ministries and departments. He therefore proposed that the draft decision should be amended to read: “The Governing Body requests the Office to provide further information and clarification in relation to privileges and immunities of the proposed identity card to the Governing Body at the 320th Session in March 2014 with consideration of this matter to be deferred until the 322nd Governing Body meeting in October/November 2014.”
31. *Speaking on behalf of the Africa group*, a Government representative of Angola noted that the document did not indicate any urgency in respect of the issuance of a Governing Body member card. Similarly, it did not propose any action to be taken in connection with the 1970 Conference resolution. He noted that, according to Section 17 of the 1947 Convention, the relevant privileges and immunities would not be enjoyed in the State of which the holder of the document was a national. Moreover, there could be legal problems if such a document was not issued on the basis of a legal agreement with ILO constituents. The Africa group therefore recommended that the legal and administrative implications of the identification document should be further clarified and the decision deferred to a future meeting of the Governing Body.
32. *Speaking on behalf of GRULAC*, a Government representative of Costa Rica expressed support for the amended version of the draft decision proposed by ASPAG.
33. *A representative of the Government of Egypt* considered that the matter needed deeper analysis and further clarity, as it raised important legal issues, including as to the purpose, scope and validity of the document, as well as to the competence of the Governing Body to decide on such a document, the obligations of States under the Convention and the scope of its Article V for the authorities of the State of which the members of the Governing Body were nationals. In light of the legal and administrative issues involved, Egypt

supported the proposals of the Africa group and of ASPAG. In preparing a future document the Office would need to consult with the United Nations, identify if a similar practice was followed in other organizations, and address the questions raised during the debate. Consultations should take place with member States so as to facilitate the decision-making process.

34. *A representative of the Government of India* supported ASPAG's proposal. Noting that a large number of member States had not ratified the 1947 Convention nor had any other equivalent legal framework in place, he requested more information on measures that could be undertaken to foster the universal acceptance of the card, as well as to the text that could be incorporated for that purpose into bilateral agreements for countries that had not ratified the 1947 Convention. He questioned the necessity of the card and wished to know what difficulties had been faced in that regard in the past. He considered that more clarification and analysis were also necessary on the apparent inconsistency between paragraphs 8 and 14 of the document (referring to section 17 of the 1947 Convention), and recalled that the 1970 Conference Resolution concerning Freedom of Speech of Non-Governmental Delegates to ILO Meetings just affirmed the importance attached to freedom of speech. He also acknowledged that it would be very difficult for the ILO to implement its mandate and core objectives in countries which did not abide with the 1947 Convention or had gaps in the implementation of legal protection mechanisms.
35. *A representative of the Government of Trinidad and Tobago* supported GRULAC's statement and ASPAG's proposal for the decision point. Trinidad and Tobago was favourable to the issuance of a card to facilitate the execution of the duties of Employer and Worker representatives. However, a number of issues needed to be considered, as not all countries had ratified the 1947 Convention and, given the sovereignty of States in such matters, the applicable arrangements could vary among jurisdictions. The representative stated that the 1970 Conference Resolution was not binding and that the granting of privileges and immunities in relation to nationals would require an amendment of Trinidad and Tobago's national laws. He empathized with those requesting more time to study the matter, as the question fell outside the sphere of labour ministries, and asked about the role of the Governing Body and the Conference in the process. More dialogue and consultation were necessary.
36. *A representative of the Government of Switzerland* supported IMEC's statement. Switzerland, which had a host country agreement with the ILO and had adhered to the 1947 Convention a little more than a year ago, appreciated the Office's efforts to ensure the privileges and immunities of the Organization. The speaker stressed that the new card would not work as an identity or travel document and that national identity documents and entry visas, where applicable, remained necessary. Moreover, the laissez-passer co-signed by the Swiss Mission and the Director-General would continue to exist alongside the new card produced by the Office.
37. *A representative of the Government of the Islamic Republic of Iran* supported ASPAG's position and endorsed the statements of the Africa group, Egypt and India. A number of important questions remained to be addressed, in particular as to the application of privileges and immunities in relation to the authorities of a State of which the person is a national. The proposed arrangement could be duplicative and information was needed as to the cost implication and other details such as the period of validity, whether it would be a biometric document, or the means of verifying that the member was on an official ILO mission. Moreover, the ministries of foreign affairs and of the interior, as well as other organizations, would need to be involved in the process. More time was needed.
38. *A representative of the Director-General (Legal Adviser)* stated that the document that the Office would prepare for the next discussion of the item would take up all the concerns and

questions raised by Governments, as well as the clarifications requested by the Workers' group on paragraph 8 of the document.

Decision

- 39. *The Governing Body deferred further consideration of this item until its next session.***

(GB.319/LILS/2/2, replaces paragraph 25.)

International Labour Standards and Human Rights Segment

Fourth item on the agenda

Strengthening the ILO's standards system and its impact, including the follow-up to the 2012 ILC Committee on the Application of Standards

- 40.** *The Director-General* emphasized that the issues under discussion were acknowledged by everybody as being of the utmost importance. They concerned questions that were of fundamental, and even existential, importance for the ILO and touched on the heart of the standards supervisory system. The 2008 ILO Declaration on Social Justice for a Fair Globalization recognized standards as a “unique advantage” of the ILO and called on the Organization to “promote the ILO’s standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization”. Everyone was therefore acutely aware not only of the gravity of the unresolved matters, particularly since the 101st Session (2012) of the Conference, but also of the pressing need to find a way forward to reach consensus on those matters. In his Report to the Conference in 2013, he had suggested a “standards initiative” aimed at consolidating “tripartite consensus on an authoritative supervisory system” and enhancing “the relevance of international labour standards through a standards review mechanism”. He had also expressed the view that “the shared weight of responsibility to find solutions could hardly be clearer”.
- 41.** Three conclusions could be drawn from that background: first, there were critically important matters that needed to be addressed with a degree of urgency; second, there was a shared common objective of having a strong, credible and authoritative standards system as a key to the achievement of the ILO’s constitutional objectives; and third, there was a shared responsibility to find a consensus and everyone was ready to make the necessary efforts and even compromises that that implied. The Governing Body was aware of the efforts already made to that end. Informal tripartite consultations had been held in February, followed by the so-called “Swiss Chalet Process”, under the good offices of the Government of Switzerland with the participation of representatives of the Employers’ and Workers’ groups. He wished to express appreciation to those who had contributed to such initiatives, and specifically to the Government of Switzerland for its generous facilitation of the consultations. Although not as much progress had been made along the road to solutions as would have been hoped, the time and the effort invested had not been wasted. They had allowed clarification of the points under discussion and understanding of divergent views and options. But it was now necessary to move forward more quickly and

more decisively so that, as a minimum, a substantial degree of consensus could be achieved before the 2014 session of the Conference in areas where it did not yet exist.

42. He had sought to consult widely on the best way forward, and the question had been discussed at length by the Officers of the Governing Body. A draft decision had been prepared, as requested by the Officers, which was purely procedural, although it embodied three underlying thoughts: first, there was urgency, and the stated aim would be to submit concrete proposals to the Governing Body in March 2014; second, the process ahead needed to be fully tripartite and inclusive – all groups had crucial interests in it and contributions to make to it, which were indispensable; and third, it was for the Director-General to take direct responsibility for the ongoing process, in accordance with the commitments he had made at the outset of his mandate and which naturally he stood ready to fulfil.
43. *The Employer Coordinator* expressed appreciation of the good offices of the Government of Switzerland in facilitating the “Swiss Chalet Process”, which had allowed for the clarification of a number of issues under consideration. There was urgency to reach, by consensus, a decision with regard to the list of cases, the mandate of the Committee of Experts on the Application of Conventions and Recommendations and its interpretation of the right to strike.
44. The institutional framework within which solutions were to be designed was clear. His group was in favour not only of the ILO standards system, as reaffirmed in the ILO Declaration on Social Justice for a Fair Globalization, but also of the full and efficient functioning of the supervisory mechanisms. Before the 103rd Session (2014) of the Conference, there was a need to have clarity, in particular with regard to the nature of the report of the Committee of Experts. The group was also very interested in the question of the balance between the supervisory mechanisms. That question required close examination in the light of new developments and current realities. From that perspective, the gradation of the constitutional procedures – namely those set out in articles 19–22, 24 and 26–33 of the Constitution – needed to be taken into account, as did the ultimate goal of achieving the proper implementation of international labour standards.
45. The group reiterated its willingness to create opportunities for a constructive tripartite dialogue with respect to the right to strike and the ways to exercise that right, without prejudice to its position that it was a matter to be addressed under national legislation and practice. With respect to standards policy, it agreed with the Director-General that it was important to continue the examination of the standards review mechanism, as much remained to be done. It was open to exploring the possibility set out in article 37(2) of the ILO Constitution providing for a genuine, authoritative, internal interpretation mechanism in addition to the International Court of Justice. The group also reiterated its willingness: first, to engage in further dialogue on those issues and to seek consensus; second, to reaffirm its principles and convictions, which were genuine and constructive; and third, to seek solutions. The group supported the draft decision. In addition, it would be important for the Director-General and the Office to set an agenda outlining the way forward so that all the parties could prepare adequately.
46. *The Worker spokesperson* recalled that, despite the fact that his group had not been at the origin of the conflict, it had always sought solutions, as it had, for example, during the two rounds of informal tripartite consultations held since June 2012 and during the “Swiss Chalet Process”. Although it had not resulted in solutions, the process had been useful in that it had given the social partners time to study all the pieces of the puzzle. He thanked the Swiss Government for its good offices. There had been no discussion of the right to strike during the “Swiss Chalet Process”. The discussion had focused on the fundamentals of the system, namely international labour standards and the supervisory system. In that

regard, he reaffirmed that the search for solutions should not be focused on a single vision, but should encompass various options.

47. The social partners had had the opportunity to provide information to governments about the situation, as all three groups of constituents should be part of the process. There was now a need to turn to a new methodology, as set out in the draft decision, which the group supported, subject to the deletion of the word “proper” in the second paragraph and the replacement of the word “required” by “and” in the last paragraph.
48. *Speaking on behalf of IMEC*, a Government representative of Canada welcomed the draft decision and recalled that the IMEC governments placed a high level of importance on the ILO supervisory system, given the key role that it played in facilitating the implementation of, and adherence to, international labour standards with a view to improving working conditions throughout the world. IMEC was committed to facilitating the resolution of the issues that were creating the current difficulties surrounding the ILO supervisory system. Despite the smooth functioning of the Conference Committee on the Application of Standards in June 2013, there were matters that remained to be discussed and resolved. While appreciating the efforts made so far, IMEC recognized that there was a pressing need for substantive progress. The ILO supervisory system was a unique and essential element of the Organization’s mandate and mission, and was often cited as being the most advanced and best-functioning one within the international community. It was imperative that issues relating to the functioning of the supervisory system should be dealt with openly and constructively so as to strengthen, rather than diminish, its effectiveness, credibility and prestige. The solution would require full tripartite participation and consensus, and the involvement of, and communication with, governments would henceforth be critical in resolving the outstanding issues. Notwithstanding the current challenges, the Employers’, Workers’ and Government groups had all steadfastly expressed their belief in, and support for, the ILO supervisory system. IMEC was encouraged by the unanimous support and looked forward to participating in the consultations that the Director-General would undertake personally, and which would have to involve all groups.
49. *Speaking on behalf of ASPAG*, a Government representative of Australia reiterated ASPAG’s support for a robust and effective ILO supervisory system, which was essential to encourage adherence in law and practice with internationally determined norms and values in the increasingly challenging and ever-changing world of work. ASPAG highlighted its support for the important roles played within the ILO supervisory system by the Committee on the Application of Standards and the Committee of Experts. With reference to the matters that had arisen during the Conference in June 2012, and particularly the opinions of the Committee of Experts, ASPAG remained committed to contributing to a resolution, in cooperation with the tripartite partners, and remained of the view that the matter would be resolved only through tripartite commitment and support. ASPAG appreciated that the social partners had sought some “time out” from tripartite discussions to build greater understanding and confidence in an informal atmosphere, but was disappointed that the talks had not made further progress in clarifying some outstanding issues. ASPAG was also mindful that time was passing by and that governments had an expectation that those matters would not interfere with the proper functioning of the Conference in June 2014. ASPAG was therefore willing to support and participate in the consultation process to be undertaken by the Director-General with a view to a detailed discussion taking place in March 2014 of proposals to resolve the outstanding matters. ASPAG reaffirmed its resolve to ensure that the ILO supervisory system operated effectively and in the interests of all those who needed and benefited from it.

50. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Lithuania said that the following countries aligned themselves with the statement: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, the Republic of Moldova, Armenia and Georgia. The EU and its Member States had followed with great attention the informal bipartite discussions to improve the functioning of the ILO supervisory system and thanked all those involved, in particular the Swiss Government. They attached great importance to the proper functioning of the Conference Committee and the need for the impartial supervision of the implementation of international labour standards. The ILO supervisory system contributed not only to the implementation of labour standards, but also to the promotion of universal human rights, whether civil and political or economic, social and cultural. The ILO supervisory system was important also because EU policies and law made reference to ILO standards and their supervision, and the ratification and effective implementation of core ILO labour standards was promoted by the EU. They therefore strongly supported the direct and active involvement of the Director-General in finding a long-term and durable solution to the problem through a process that should fall within the following parameters: it should be in the framework of the ILO Constitution; it should involve all the tripartite constituents – employers, workers and governments; and it should take into consideration the time concerns, bearing in mind that continued delay threatened the credibility of the supervisory system.
51. *Speaking on behalf of the Africa group*, a Government representative of Botswana reiterated the full commitment of the Africa group to reforms aimed at strengthening the supervisory system. The group held the system in high esteem, as it played a key role in enhancing compliance with international labour standards. Noting the recent consultations in September 2013 and the commitment of the Director-General to ensuring that the consultation process continued, the group called for the full participation of governments in the process to resolve the matter with the urgency it deserved and with a view to reaching consensus to enhance the integrity of the supervisory system and strengthen its role in addressing the social problems of the modern world.
52. *A Government representative of Japan*, while supporting the statements by IMEC and ASPAG, expressed concern at the slow progress of the consultations between the Employers' and Workers' groups and the fact that consensus had not yet been reached. The standards system was the most fundamental function of the ILO and it would be fatal if it did not operate properly, as the whole system for the appropriate application of standards would be jeopardized. Furthermore, the ILO had been entrusted by the international community, as reaffirmed by the 1996 Ministerial Conference of the World Trade Organization (WTO) in Singapore, with the role of dealing with international labour standards. That had led to the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work. In that context, it was necessary to support the initiative of the Director-General to ensure that the ILO fulfilled that role effectively.
53. *A Government representative of the Russian Federation* welcomed the readiness of the Director-General to take the necessary measures to seek a solution to the current problems, based on consultations with all the groups. It was hoped that in March 2014 the Governing Body would be able to consider a draft decision that would ensure that disagreements that were detrimental to the Organization did not resurface during the 2014 session of the Conference. It was of particular importance to ensure the proper functioning of the ILO supervisory system with a view to guaranteeing labour and social rights throughout the world. He noted the effective operation of the Committee of Experts and welcomed the readiness of the Employers' and Workers' groups to participate in dialogue, which it was hoped would strengthen rather than weaken the standards system.

54. *A Government representative of France*, in expressing support for the statements made by IMEC and the EU, emphasized that the ILO supervisory system was an essential element of international economic and social governance and a core function of the ILO. She thanked the Swiss Government for its support for the consultation process. In the coming months, the Director-General would be able to build upon the work that had been undertaken over the past year. All the elements of the debate were now well identified and the parties had all expressed the intention of reaching consensus within the framework of the ILO Constitution. France, which had put forward proposals with a view to strengthening the ILO supervisory system and improving tripartite ownership, would do its best to facilitate consensual solutions under the auspices of the Director-General.
55. *The Employer coordinator* agreed that progress had been made in the dialogue and in understanding the basis on which the current complex discussion was taking place. It had been necessary for the social partners to engage in bilateral consultations to clarify issues as a prelude to tripartite discussions. His group was confident that urgent and necessary measures could be taken as there was a shared purpose, even though issues remained to be addressed within the constitutional framework. In a spirit of compromise, the Employers' group could accept the changes to the draft decision proposed by the Workers' group.
56. *The Worker spokesperson* welcomed the statements made by Government representatives in which they had emphasized the necessity and quality of the ILO supervisory system. He agreed that a certain amount of progress had been made during the consultation process, even though the results were not yet visible. He welcomed the agreement reached on the continuation of the process.

Decision

57. *The Governing Body took note of the information made available to it on the informal discussions which had taken place between representatives of the Employers' and Workers' groups on principles to improve the functioning of the ILO supervisory system through the good offices of the Government of Switzerland (the "Swiss Chalet Process"). It further recalled the informal tripartite consultations that had been convened in September 2012 and February 2013 and reported to the Governing Body at its 317th Session in March 2013, and recognized that the Committee on the Application of Standards had been able to complete its work at the 102nd Session (2013) of the International Labour Conference.*
58. *Despite the efforts made to date, which had allowed the clarification of a number of issues under consideration, the Governing Body underlined the pressing need for substantive progress to be made on matters which were of fundamental importance to the functioning of the ILO supervisory system in advance of the 103rd Session (2014) of the Conference.*
59. *The Governing Body therefore instructed the Director-General to undertake, as a matter of priority, consultations with all groups with a view to the submission to the Governing Body at its 320th Session (March 2014) of concrete proposals that address the main issues which are outstanding in relation to the supervisory system. In so doing, it underlined the importance of full tripartite participation in the process as key to the building of tripartite consensus and to maintaining the strength and authority of the system.*

Fifth item on the agenda

Entry into force of the Maritime Labour Convention, 2006 (MLC, 2006)

(GB.319/LILS/5)

60. *A representative of the Director-General* (Director, International Labour Standards Department) recalled that, to date, 47 member States, representing over 75 per cent of the world's gross tonnage of ships, had registered ratifications of the Maritime Labour Convention, 2006 (MLC, 2006). Four more ratifications had been received, but had not yet been registered, pending receipt of information on the social security coverage of seafarers. The MLC, 2006, was a comprehensive instrument that consolidated 68 existing international maritime labour standards and introduced new approaches to ensure decent working and living conditions for seafarers and a level playing field for quality shipowners. She described the innovations introduced by the Convention in terms of the design and structure of its legal provisions, the system of the certification of ships, the tacit amendment procedure, and the flexibility as to the means of implementation. Those new concepts and approaches could be considered in future ILO standard-setting activities. The Office was providing technical assistance to member States for the widespread ratification and effective implementation of the MLC, 2006, including training and capacity-building courses and workshops and legal gap analyses, and numerous tools were being developed, such as the "Frequently Asked Questions" publication, handbooks, guidelines and the MLC, 2006, database. Concerning the Special Tripartite Committee, another unique feature of the Convention, she indicated that, having formally established the Committee in June 2013, the Governing Body should now confirm the dates of its first meeting as being from 7 to 11 April 2014 and adopt its agenda, the process for appointing the Chairperson and additional Shipowner and Seafarer representatives, and the procedure for inviting other organizations or entities to be represented on the Committee by observers. She indicated that the nominations for Shipowner and Seafarer representatives had been received.
61. *The Worker spokesperson* noted the significant increase in the level of ratification over the past year and welcomed the amount of resources allocated by the Office for the promotion of the Convention, the number of materials produced, and the training delivered, observing that insufficient ratification of an ILO instrument could be attributed to the absence of its promotion by the Office. The Workers' group also welcomed the emphasis on implementation, including on building the capacity of maritime labour inspection systems, which was a key element. The success of the MLC, 2006, was important to the whole ILO. Sustainable funding from the regular budget of the Organization should, therefore, be allocated to enable the Convention to achieve its full potential and its Code to be amended to reflect the changes in the shipping industry. As the implementation of the MLC, 2006, by port State control officers was also important, he expressed satisfaction with the number of vessels that had been prevented from leaving port for reasons of non-conformity with the Convention. The Workers' group endorsed the draft decision in paragraph 29 of the document.
62. *The Employer coordinator* said that the MLC, 2006, would be a helpful model for other ILO standard-setting activities. In addition, the Special Tripartite Committee was relevant as it would consider proposals for amendments to the Code of the MLC, 2006, in accordance with Article XV of the Convention. The existence of such a Committee further demonstrated the need for a general mechanism to monitor on a continuous basis the working of standards, which could take the necessary action to ensure their relevance, and served as a reminder of the concerns over the external credibility and relevance of labour standards that had arisen in the absence of a standards review mechanism. He agreed with all the points of the draft decision but sought clarifications with respect to paragraph 29(d),

concerning the appointment and funding of the participation of additional Shipowner and Seafarer representatives on the Special Tripartite Committee. He also wished to know whether the voting mechanism would be adjusted in the event that members were unable to attend.

63. *Speaking on behalf of the Africa group*, a Government representative of Botswana commended Liberia and Togo, which had ratified the MLC, 2006, as at 20 August 2012. He also commended the 16 additional African countries that had since registered ratifications, and the progress made by other African countries towards ratification. The five-year plan of action for the Convention's rapid and widespread ratification had been a success, given the number of registered ratifications. He noted the Office's focus on the capacity building of maritime labour inspection systems in flag and port States through tripartite workshops. The Africa group welcomed the fact that the agenda of the Special Tripartite Committee would include an exchange of information related to the implementation of the Convention, which would undoubtedly enhance the effectiveness of the Convention. It supported the draft decision in paragraph 29 of the document.
64. *Speaking on behalf of the EU and its Member States*, a Government representative of Lithuania said that the following countries aligned themselves with the statement: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Bosnia and Herzegovina, the Republic of Moldova and Armenia. Noting the importance of the MLC, 2006, she recalled the bipartite agreement and legislative instruments at the European level that had been adopted or were being considered in order to implement the Convention, the provisions of which were even more favourable than the Convention. Nineteen EU Member States had so far ratified the Convention and there were good prospects for ratification by the remaining countries, apart from landlocked States. The EU had supported and contributed, financially and otherwise, to the ILO work on the Convention from the outset. It shared the views expressed in the Office document that the lessons learned from the innovative design of the Convention could be applied to other international labour standards. The EU supported the convening of a meeting of the Special Tripartite Committee, and requested that the EU should be invited to attend. The EU supported the draft decision in paragraph 29 of the document.
65. *Speaking on behalf of GRULAC*, a Government representative of Costa Rica noted that the entry into force of the MLC, 2006, created a reporting obligation for ratifying Members and permitted port State control, irrespective of whether the flag States concerned had ratified the Convention. The Convention was also the first international labour standard that imposed on flag States the obligation to certify living and working conditions on board ships. Concerning the first meeting of the Special Tripartite Committee, the Governing Body needed to approve the nomination of additional Shipowner and Seafarer representatives, confirm the dates proposed and adopt the agenda of the meeting. In that connection, GRULAC supported the draft decision in paragraph 29 of the document.
66. *A Government representative of Italy* stated that the parliamentary approval of the ratification of the MLC, 2006, had been published in Italy's *Official Gazette* on 24 October 2013, and that steps were now being taken for the preparation and deposit of the formal instrument of ratification.
67. *A Government representative of Bulgaria* said that while the MLC, 2006, had entered into force for Bulgaria on 20 August 2012, his country faced difficulties in adopting national requirements for the training and certification of ships' cooks, as there was not yet a "model course". More detailed training programmes and requirements for the qualifications of trainers and for training facilities would ease the application of the Convention. The *Guidelines on the medical examinations of seafarers*, jointly developed by the ILO and the International Maritime Organization (IMO), were a useful example in

that respect. With regard to certification, the same approach could be adopted as the one under the IMO's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention), which prescribed the form and content of certificates. He welcomed the ILO database on the application of the MLC, 2006, and recommended that additional information should be added for users, such as information on the competent authorities and shipowners' and seafarers' organizations of ratifying States that could be contacted in case of queries or complaints. His Government supported the draft decision in paragraph 29 of the document.

68. *A Government representative of Germany* concurred with the statement made on behalf of the EU and its Member States. The Convention was not only a political success, but also set new standards with regard to the quality of the technical work of the ILO. Germany had ratified the Convention in August 2013, adjusted its maritime labour legislation to the new requirements and ensured that international competition for seaborne trade would not diminish the working and living conditions of seafarers.
69. *A Government representative of Indonesia* referred to the national maritime legislation and stated that such legislation was, in part, in line with the requirements of the MLC, 2006. His Government was currently in the process of ratifying the Convention and was conducting awareness programmes in that connection, but further procedural steps were needed. In that regard, his Government would welcome any technical assistance that the Office could offer.
70. *A Government representative of Panama* echoed the comments made on behalf of GRULAC. The entry into force of the MLC, 2006, presented a challenge for his Government, as, in addition to being the world leader in ship registration, Panama was also a port State that had to inspect standards on board foreign-flagged ships. He referred to the extensive national and international activities in law and practice that the Government had undertaken since ratifying the Convention, and noted that national laws had been amended to align them with the provisions of the Convention. A computerized system had been established by the Panama Maritime Authority to provide information and services to users worldwide. In addition, numerous inspectors had been trained and it was hoped that Panama could continue to actively participate in training activities, including training of foreign maritime administrations. His Government supported the draft decision in paragraph 29 of the document.
71. *A Government representative of India* elaborated on the legislative and practical measures taken by India as a flag State, a port State and the world's second largest seafarer-supplying country. The ratification of the MLC, 2006, had been approved on 3 July 2013. His Government expressed support for the draft decision in paragraph 29 of the document.
72. *A Government representative of Japan*, recalling that his country had registered its ratification in August 2013, expressed the hope that additional countries would ratify the Convention so that seafarers, shipowners and other stakeholders in the maritime industry would benefit.
73. *A Government representative of China* noted that, although his country had not yet ratified the MLC, 2006, discussions and preparations for its ratification were under way. He expressed the hope that his Government could attend the first meeting of the Special Tripartite Committee as an observer.
74. *The representative of the Director-General* (Director, International Labour Standards Department) answered the questions raised by the Employer coordinator. Concerning the voting arrangements in the event of absent Shipowner and Seafarer representatives in the Special Tripartite Committee, Article XIII(4) of the MLC, 2006, provided that a weighted

system would be used. That provision was also contained in article 13(1) of the Standing Orders of the Special Tripartite Committee. In response to the question concerning the funding arrangements for Shipowner and Seafarer representatives on the Special Tripartite Committee, she explained that the Governing Body had decided to cover the expenses of 15 representatives from shipowners' and seafarers' groups. Those representatives should be nominated by each group and their names should thereafter be communicated to the Office so that invitation letters could be sent. All member States that had ratified the MLC, 2006, would automatically be members of the Committee with voting rights, while non-ratifying member States could participate as observers without the right to vote. She added that the Office would continue to provide technical assistance, such as supporting the first legal workshop on the MLC, 2006, for francophone African States, to be held in Senegal in December 2013.

75. *The Employer coordinator* expressed his group's agreement with the draft decision in paragraph 29 of the document.

Decision

76. *The Governing Body:*

- (a) took note of the information in the introduction and Part A of document GB.319/LILS/5;*
- (b) decided to convene a meeting of the Special Tripartite Committee in Geneva from 7 to 11 April 2014;*
- (c) adopted the Committee's first agenda as proposed in the appendix to document GB.319/LILS/5;*
- (d) appointed to the Committee, having consulted the Joint Maritime Commission in accordance with Article XIII, paragraph 2, of the MLC, 2006, the additional Shipowner and Seafarer representatives in accordance with article 4, paragraph 3, of the Standing Orders of the Committee;*
- (e) requested the Director-General to address an invitation to all ratifying Members and Shipowner and Seafarer members appointed to the Special Tripartite Committee; and*
- (f) delegated decisions relating to the appointment of the Chairperson of the Committee, and other matters that may arise related to the convening of the meeting, including invitations to observers, to the Officers of the Governing Body.*

(GB.319/LILS/5, paragraph 29.)