



## TWELFTH ITEM ON THE AGENDA

**Report of the Committee on Legal Issues  
and International Labour Standards***Contents*

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1. The Committee on Legal Issues and International Labour Standards (LILS Committee) met on 10 November 2006. The following members served as Officers:

*Chairperson:* Mr. G. Corres (Government, Argentina)

*Employer Vice-Chairperson:* Ms. F. Awassi (acting in place of Mr. B. Boisson)

*Worker Vice-Chairperson:* Mr. U. Edström

2. The Chairperson informed the Committee that, in relation to point 5 (Improvements in the standards-related activities of the ILO) on the proposed agenda, there was no document because it had not been possible to carry out the desired consultations on that item between March and November due to the unavailability of the groups. On behalf of the Officers, he proposed that the point be postponed and placed on the agenda of the March 2007 session for consideration, and that there be an informal discussion of the issues immediately after the session based on the Information Note prepared by the Office, which took into account previous discussions in the Committee, circulated to the Committee members earlier in the week. The informal discussion would provide input for the Office document to be submitted under this item to the March session of the Governing Body.
3. The representative of the Government of Mexico, speaking on behalf of the Latin American and Caribbean Group (GRULAC), and supported by the Employer members, favoured the postponement of the consideration of this point until the next session, when the Office could prepare a document sufficiently in advance, based on the Information Note; they would participate in the informal discussion following the Committee's meeting on that understanding.
4. A representative of the Director-General (Mr. Kari Tapiola, Executive Director for the Standards and Fundamental Principles and Rights at Work Sector) highlighted that the proposal by the Government of Mexico was fully in line with the proposal of the Officers. He clarified that the informal discussion would provide guidance to be used in preparing the paper for the Committee's next session.
5. The Worker members agreed for a discussion limited to an informal format. Consultations were needed before March 2007 in view of the preparation of the document that would be submitted at that session.
6. The Chairperson noted the consensus in the Committee to defer consideration of point 5 to the next session of the Committee.

## First part: Legal issues

### I. Progress in the work to adapt the *Manual for drafting ILO instruments* (First item on the agenda)

7. The Committee had before it a document submitted for information<sup>1</sup> providing an update on recent progress.

<sup>1</sup> GB.297/LILS/1.

8. The Legal Adviser recalled that the *Manual for drafting ILO instruments* had been presented to the Committee at its 294th (November 2005) and 295th (March 2006) Sessions. As the Committee had been informed earlier, this *Manual* was the product of a Tripartite Experts Meeting held in June 2005. She reported that the interactive online version of the *Manual* had been technologically improved and would soon be available on CD-ROM. The Office had also produced a new print version of the *Manual*, which was available for consultation and could be ordered. Since March 2006, the Office had sought the views of constituents in the process of producing the requested “quick guide” to drafting ILO instruments. Government, Employers’ and Workers’ delegates had been invited to informally test a pilot draft at the International Labour Conference in June 2006; the feedback received varied in relation to their experience and knowledge of other available tools and the draft was being revised with a view to making it available at the Conference in 2007. Resources for producing the quick guide had been secured, and credit was given to the International Training Centre of the ILO in Turin for assisting with the design and production of the various products. Suggestions on the draft quick guide were still welcome and, under the production schedule, would be timely if received during the present Governing Body session.
9. The Worker members welcomed the progress made in general and on the quick guide in particular. They hoped that the *Manual* could be distributed widely and could be sent as well to trade unions in various countries.
10. The Employer members noted that, in general, most of the papers submitted to the Committee were for information only, including the one under consideration. In their view, the Committee should be used as a mechanism of governance, receiving more documents for discussion and decision. In addition, the document under consideration should have included information on the feedback received from the testers on the draft quick guide and how the feedback was being reflected in the revision of the draft guide. Noting that resources had been secured for the production of the guide, they emphasized the need to produce a sufficient number of copies.
11. The Worker members supported the Employers’ general request for more documents containing a point for decision, but believed that documents that responded to the Committee’s requests for information should be delivered in that capacity.
12. The representative of the Government of Nigeria, speaking on behalf of the Africa group, appreciated the progress made so far. She recalled that the group had always wished to have a user-friendly manual. The Office should ensure the finalization of the quick guide by the International Labour Conference in 2007.
13. The Committee took note of the document and of the discussion thereon.

## **II. The ratification campaign for the 1997 Instrument of Amendment to the ILO Constitution**

(Second item on the agenda)

14. The Committee had before it a document<sup>2</sup> providing, as requested at its last session, an update on the campaign to promote the ratification of the 1997 Instrument of Amendment to the ILO Constitution.
15. The Legal Adviser explained that, after its entry into force, the 1997 constitutional amendment would permit the Conference, subject to a number of guarantees, to abrogate an ILO Convention that had become obsolete. The amendment thus formed part of the Organization's efforts to ensure a body of international labour standards that was up to date, relevant and coherent. It was one of the first initiatives taken following the recommendations of the Governing Body's Working Party on Policy regarding the Revision of Standards ("Cartier Working Party"). A total of 120 ratifications, constituting two-thirds of the current ILO membership of 179 member States, were needed for the amendment to enter into force. Since the preparation of the document, Saint Kitts and Nevis had ratified the Instrument. This latest ratification brought the number of ratifications or acceptances to 90, leaving 30 additional ratifications needed for the Instrument of Amendment to enter into force. The target for entry into force was 2007, ten years after the Conference had adopted the Instrument. Efforts were being made in that direction although the ratification campaign had no independent funding. Achieving this target would constitute an important milestone for the ILO and, toward this end, the Office remained ready to provide assistance and further information to individual member States.
16. The Worker members expressed surprise that Governments would find it difficult to ratify the Instrument since the Amendment had received overwhelming support when adopted and had not been controversial. The Instrument was one of the outcomes of the Working Party on Policy regarding the Revision of Standards, in which the Worker members had participated actively. Ensuring that international labour standards were up to date, and seen as such, was crucial to the credibility of the standards and of the ILO as a whole. While international labour standards were sometimes criticized for being outdated, governments should make their contribution to the joint effort of updating them by ratifying the Instrument of Amendment; the recent ratification by Saint Kitts and Nevis should encourage other member States to do the same. Indeed, of the Members that had not yet ratified the Instrument, 11 were members of the Governing Body and should take the lead by ratifying it. The Office should work closely with the social partners and involve the national tripartite committees to achieve ratification in the countries concerned.
17. The Employer members were disappointed that the paper had not been submitted for discussion and decision. In addition, further information would be useful, such as which Members had already started ratification proceedings and which were generally favourable to ratification, so that the Office could better target its promotional efforts. On the consequences of ratification of the Instrument, they understood that, once ratified, it did not require further separate action by member States since its purpose was to enable the ILO to take action. They suggested that, pending entry into force, the Office should advise individual member States on the possibility of denouncing the Conventions that were considered to be obsolete, since that would achieve the same effect. Moreover, the informative brochure that was already available in a number of languages might usefully be made available in Russian.

<sup>2</sup> GB.297/LILS/2.

18. The representative of the Government of Finland emphasized that the Instrument for Amendment was essential for the credibility of international labour standards as it ensured that they were relevant and up to date. Since the Amendment had been accepted nearly unanimously, there was no reason to believe that it posed any significant problem to member States regarding ratification. With some 30 ratifications needed, the target of entry into force by the end of 2007 was still in reach. All member States which had not yet done so should consider ratification as soon as possible.
19. The representative of the Government of Poland clarified that, while that country was not mentioned in the document, it had not ratified the Amendment. However, the Ministry of Labour had already initiated ratification proceedings. The ratification was a prerogative of the President of the Republic and while the proceedings were lengthy, she hoped that the Instrument of Amendment could be ratified by the end of 2007.
20. The representative of the Government of Nigeria, speaking on behalf of the Africa group, appreciated the Office's ratification campaign and called upon Members that had not yet done so to ratify the Instrument in order to reach the necessary threshold of 120 ratifications for its entry into force. She underscored that the Instrument was a key tool in maintaining an up to date, relevant and coherent body of standards.
21. The representative of the Government of South Africa reported that his country had started its internal procedure with regard to ratification and it should be possible to complete the process well ahead of the proposed target date.
22. The Legal Adviser observed that the ratification of the Amendment did not appear to be a controversial matter among Members; it simply seemed to have a low profile on Governments' agendas. The Office welcomed the statements made by Governments regarding ratification prospects. The Office of the Legal Adviser was working closely with the International Labour Standards Department on the campaign, since the active support of standards specialists in field offices was crucial for its success. Use had been made of ILO Regional Meetings to promote the Instrument, and advantage could also be taken of the next session of the International Labour Conference, when there would be an opportunity to deposit ratifications. She further responded that the Office would look into the possibility of a Russian translation of campaign materials and that the document submitted could give rise to a point for decision if desired.
23. The Committee took note of the document and of the discussion thereon.

### **III. The status of privileges and immunities of the International Labour Organization in member States** (Third item on the agenda)

24. The Committee had before it a document submitted for information,<sup>3</sup> providing a review of the status of privileges and immunities of the Organization in member States.
25. The Legal Adviser explained that this topic was suggested for the agenda of the Committee at its last session for two reasons: first, to recall that privileges and immunities of the ILO in member States were an essential element in the provision of effective support to the development of decent work country programmes and served as a guarantee for unimpeded

<sup>3</sup> GB.297/LILS/3.

delivery of technical assistance to the Members; and second, as a management concern, to reduce the risk to the worldwide operations of the Organization posed by the absence of a uniform floor of privileges and immunities. The Constitution of the ILO, in article 40, established the obligation for all Members of the ILO to ensure such privileges and immunities as were necessary for the fulfilment of its purposes. One of the pillars of doing so was ratification of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations and its Annex I concerning the ILO. Annex I was particularly important for the ILO, not only for its staff, but also for the constituents. By these means, ILO constituents could be protected, like the staff, in terms of freedom of speech and immunity from arrest and detention in relation to acts involved in participating in ILO meetings. Finally, as reported to previous sessions of the Governing Body, there had been issues relating to taxation and the Organization. Other means of ensuring privileges and immunities were also possible, such as bilateral agreements between the Organization and member States, but these involved greater transaction costs. A substantial number of Members (61) had not yet ratified the 1947 Convention. The Legal Adviser invited all interested member States to contact the Office to address the matter in regard to their particular situation.

- 26.** The Employer members considered the issue to be important for the ILO and regretted that the document presented did not include a proposed decision to be taken by the Governing Body. Despite the general information in the paper, they felt that it did not provide enough practical information, such as specific examples where such privileges and immunities had not been respected and their impact, as well as any obstacles for Members to ratify the Convention in order to get an idea of the urgency of the problem. The efforts suggested by the Office in the paper (paragraph 18) should be based on clear objectives, deadlines and sufficient financial means.
- 27.** A representative of the Director-General (Mr. Tapiola, Executive Director for the Standards and Fundamental Principles and Rights at Work Sector) noted that the Committee was free to propose a point for decision on any agenda item. The designation of documents as being “for decision” or “for information” reflected only the proposals of the Office. Paragraph 18 of the document presented by the Office could easily be converted to a point for decision should the Committee so decide.
- 28.** The Worker members underscored the importance of privileges and immunities, and in particular the type of protection they afforded delegates and the Office. They recalled that the Credentials Committee at the 95th Session of the International Labour Conference had referred to the situation of an ILO official arrested and deported while on official mission looking into freedom of association, which was totally unacceptable. They supported the appeal to Members to ratify the 1947 Convention and its annex concerning the ILO, and supported the proposal to change paragraph 18 of the document into a point for decision.
- 29.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, stressed the importance of member States becoming parties to the 1947 Convention and its annex concerning the ILO. The Africa group particularly appreciated seeing the balance stated in paragraphs 3 and 12 of the document. Recalling that the issue was the responsibility of foreign affairs ministries, the matter would need to be brought to their attention. Paragraph 18 should be converted into a point for decision and the responsibility should be placed on the Director-General to carry out the efforts, rather than on member States, since a decision to ratify was subject to national sovereignty.
- 30.** The Worker members supported the redrafting of paragraph 18 as a point for decision and suggested that it request the Director-General to undertake the efforts mentioned.

31. The Employer members concurred with the proposal for paragraph 18 to become a point for decision. The Chairperson, noting the consensus on this point, stated the proposed point for decision, which the Committee adopted.
32. *The Committee recommends to the Governing Body that it request the Director-General to:*
- (a) *renew the invitation to States that have not yet acceded to the Convention and accepted Annex I relating to the ILO to do so;*
  - (b) *invite those member States that have acceded to the Convention but not yet accepted its application to the ILO to do so by notifying the Secretary-General of the United Nations of their willingness to apply to the ILO the provisions of the Convention and Annex I; and*
  - (c) *report periodically on the situation of privileges and immunities in the member States, and in particular in the context of decent work country programmes.*

#### **IV. Other legal issues: Resolutions in the International Labour Conference** (Fourth item on the agenda)

33. The Committee had before it a document submitted for information<sup>4</sup> concerning procedures applicable to resolutions submitted to the International Labour Conference.
34. The Employer members recalled that the document had been first proposed by the Employers' group at the 95th Session of the International Labour Conference in the context of the Conference's adoption of a resolution concerning asbestos. As noted in the previous session of the Governing Body, the Employers had questioned its receivability and had requested that a paper be prepared for discussion at the following LILS Committee meeting. The document before the Committee, however, did not address the Employers' questions nor did it mention the resolution. The Employer members thus proposed that the discussion be postponed until the next session of the Committee for which the Office could prepare two papers in consultation with the constituents to provide further information in two major areas: first, building on the paper before the Committee and, keeping in mind the ongoing developments in the context of the reform of the Conference, a paper should address the adoption of resolutions in future sessions of the Conference; and, second, a paper should specifically address issues arising from the resolution concerning asbestos, including its potential conflict with other international instruments, in order to understand its future impact. The Employer members did not intend to reopen a debate on the substance of the resolution concerning asbestos but, since the credibility of the ILO was at stake, the questions raised by the resolution should be explored and possible solutions addressed. The Employers stressed the need for the Office to fully consult the tripartite constituents in the drafting of the papers in order to ensure that all relevant issues are addressed.
35. The Worker members were surprised at the proposal for deferral. They considered that the document before the Committee corresponded to what was requested; it described the procedures that lay outside the framework of the Resolutions Committee and did not

<sup>4</sup> GB.297/LILS/4/1.



address the procedures governing the Resolutions Committee, which they hoped would be revived within the Conference framework. They were concerned that the Employers' request was rather aimed at contesting the content and subject matter of the resolution. However, the Committee could not undo what had been decided by the Conference. They requested clarification on the proposal made by the Employer members.

36. The Employer members explained that they were not seeking to reopen a debate on the substance of the resolution, but that they had requested a document in order to avoid another situation involving the adoption of a complex resolution by a technical committee without proper preparation.
37. The representative of the Government of Nigeria, speaking on behalf of the Africa group, found the Employer members' proposal confusing, and requested clarification on the content of a possible document to be presented to the next session of the Committee. Footnote 11 of the document before the Committee did not refer to the specific situation of the asbestos resolution and it was not clear what could meaningfully be discussed in relation to an already adopted resolution. She deemed it improper to seek to reopen discussion on a resolution duly passed by the Conference, even if the resolution was not what the Employer members had expected. She refused to accept that the credibility of the ILO was at stake simply because the resolution had been adopted by the Conference.
38. The representative of the Government of Canada shared some of the concerns of the Employer members with respect to procedures for resolutions in technical committees, and it was that subject which would benefit from a further paper. In particular, she was concerned that resolutions on highly complex issues could be introduced at the last minute in a technical committee of the Conference, whose members were there for other purposes, and debated by unprepared delegations. A further paper should clarify the procedure and criteria for determining whether a resolution related to an item on the agenda of the Conference and the procedure for dealing with draft resolutions presented to technical committees.
39. The representative of the Government of France, supporting the views of the Worker members and the Africa group, considered that the debate about the resolution concerning asbestos should not be reopened. While the first topic proposed by the Employer members for a further paper might be suitable, she could not accept the second topic.
40. The representative of the Government of Finland considered that the Standing Orders of the Conference were clear. He stressed that, even if a conflict with other instruments was not to be excluded, since the resolution concerning asbestos had been adopted by the Conference, there was nothing to be done at this stage, even though he understood the Employer members' views on the matter.
41. The Legal Adviser noted that the proposal for some aspects of the topics might raise questions in relation to mandates. Furthermore, the competence to interpret an international labour Convention lay with the International Court of Justice. The Working Party on the International Labour Conference might be examining changes to procedural rules. The Office would consult informally with the representatives of the groups at an early stage in shaping the documents to be submitted to the next session of the Committee. She recalled that those consultations were not intended to result in a joint drafting exercise; nor was it possible to send draft documents to the constituents, since the Office had separate responsibility in preparing such documents and international officials were subject to the Standards of Conduct for the International Civil Service.
42. The Worker members considered that the Committee should take note of the document before it. If the Conference decided to adopt a resolution, it was sovereign to do so and the

rules guiding the procedures applied equally to any resolution submitted. They considered that any proposals for the modification of such procedures should be discussed within the Working Party on the International Labour Conference. Whether the asbestos resolution conflicted with other international instruments was not within the mandate of the Committee.

43. The Employer members reiterated their request to be consulted in preparation of the new document for the next session.
44. The representative of the Government of Nigeria, speaking on behalf of the Africa group, requested that the Governments be consulted in the preparation of the document along with the Employer and Worker members.
45. A representative of the Director-General (Mr. Tapiola) stated that, while the proposal was to set the item again on the agenda of the Committee, the Legal Adviser had pointed out that there was a link to another process, i.e. the Working Party on the International Labour Conference. In any event, any paper that was submitted to the Governing Body would be shaped in consultation with the groups, including Governments, which would be consulted through their regional coordinators.
46. The representative of the Government of Nigeria, speaking on behalf of the Africa group, concurred that a further paper could be prepared for discussion at the next session of the Committee, so long as the consultations and the paper did not revisit the substance of the resolution concerning asbestos.
47. The Worker members, supporting the position of the Africa group, understood that any further paper should raise other points within the mandate of the Committee that were additional to the facts already accurately presented in the document presently before the Committee. All other issues should be referred to the Working Party on the International Labour Conference.
48. *The Committee takes note of the document and recommends to the Governing Body that it request the Office to prepare a second document, following consultation with the tripartite constituents, on the subject for the next session of the Governing Body, taking into account the scope of the discussion in the Committee.*

## **Second part: International labour standards and human rights**

### **V. Ratification and promotion of fundamental ILO Conventions (Sixth item on the agenda)**

49. The Committee had before it a paper on the ratification of ILO fundamental Conventions further to the campaign launched by the Director-General in May 1995.<sup>5</sup>
50. A representative of the Director-General (Ms. Cleopatra Doumbia-Henry, Director of the International Labour Standards Department) noted that this paper was provided to the

<sup>5</sup> GB.297/LILS/6.

Committee for information, as had been the practice in the past. She stated that consideration could be given to transforming it in future into a document for guidance and decision, since the stage had been reached in the pursuit of universal ratification where a significant number of countries had ratified all eight fundamental Conventions while a number of others were still encountering difficulties. It was important for the Office, therefore, to have guidance regarding the real obstacles – beyond the need for technical assistance, to countries ratifying the fundamental Conventions, and on what could be done to encourage and assist countries to overcome those obstacles. She believed that universal ratification of the fundamental Conventions was achievable in a foreseeable future.

- 51.** Since November 2005, when the Committee last examined the progress made concerning ratifications of fundamental Conventions, 21 new ratifications had been registered, bringing the number of countries that had ratified all eight fundamental Conventions to 123. Six countries had ratified all eight fundamental Conventions since November 2005: *Armenia, Cambodia, El Salvador, Latvia, Pakistan and St. Vincent and the Grenadines.*
- 52.** Since the document before the Committee had been finalized, the Office had received three additional communications (*Viet Nam, Kuwait and Lebanon*) in reply to the Director-General's letter of 11 July 2006 requesting information on the position of the countries concerning outstanding ratifications. This new information updated the paper under examination as follows: *Paragraph 24* – The Government of *Viet Nam* stated in September 2006 that it was expediting procedures to ratify Conventions Nos. 29 and 105. For 2007, the Government planned to carry out field research and surveys on freedom of association and the right to collective bargaining and would consider applying the principles embodied in Conventions Nos. 87 and 98. *Paragraph 37* – The Government of *Kuwait* stated in September 2006 that ratification of Convention No. 100 was still under examination. According to the Government, Convention No. 98 had been ratified in October 2004; however, the Office had not received the instrument of ratification. The Government's attention had been drawn to this matter on several occasions and the Office would take this matter up again. *Paragraph 57* – In October 2006, the Government of *Lebanon* indicated that the draft amendments to the Labour Code were still under preparation. These communications brought the number of replies received to the Director-General's letter to 25 (or 44 per cent) of the 56 countries that had not yet ratified all fundamental Conventions. However, a number of countries had expressed their position either in their annual reports under the Declaration on Fundamental Principles and Rights at Work or in statements to the International Labour Conference. As in the past, such information was also reflected in the document before the Committee. In addition, the Office had carried out a mission to Montenegro in October 2006, during which the Government indicated that a decision by Parliament concerning the ratification of ILO Conventions, including the fundamental Conventions, was expected for early 2007.<sup>6</sup>
- 53.** The Worker members stated that all ILO member States should ratify all eight Conventions. That was necessary to secure decent work and minimum ground rules for the global economy. Ratifying those Conventions was also crucial in order to ensure a rights-based approach to development and to the achievement of the Millennium Development Goals, and to give full effect to the ILO Declaration on Fundamental Principles and Rights at Work. The Workers' group expressed its satisfaction that 21 countries had ratified one or more Conventions during the period under review, and that six additional countries had ratified all eight Conventions. The efforts made by developing countries to ratify the Conventions were particularly appreciated.

<sup>6</sup> A table giving an overview of the status of ratifications of the ILO's fundamental Conventions is attached as an appendix to this report.

- 54.** The Worker members regretted that the Solomon Islands had ratified only one fundamental Convention; they hoped it would ratify the remaining Conventions in the near future and that any necessary technical assistance would be provided. The information provided by Myanmar was considered unsatisfactory, and the Worker members regretted that no further efforts had been made by the United States with respect to ratification. It was also regrettable that a number of other large countries, such as Canada, China and India, had not yet ratified the Conventions on freedom of association and collective bargaining. As a result, these instruments did not cover a majority of the world's workers. While technical matters or a lack of resources sometimes played a role in hindering ratification, in some countries there seemed to be a lack of political will. The Governing Body should be concerned that Conventions Nos. 87 and 98 attracted the lowest number of ratifications in the context of the campaign and that Convention No. 87 would soon be the lowest ratified among the fundamental Conventions. As a number of countries were considering ratification, the Office should provide the necessary technical assistance, and sufficient resources should be allocated for that purpose. Finally, the Worker members urged governments to provide more detailed information on the reasons for non-ratification.
- 55.** The Employer members welcomed the information in the paper and congratulated the Office for the progress that had been achieved in promoting ratification of the fundamental Conventions. The Employer members underscored the importance of the 1998 ILO Declaration on Fundamental Principles and Rights at Work in this context, noting that it placed an obligation on member States, whether or not they had ratified the fundamental Conventions, to give effect to the principles underlying those Conventions. That being so, ratification was not the only option.
- 56.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, stated that only 13 African member States had not ratified all eight fundamental Conventions, and that nine of those had already ratified seven of them. This illustrated the great importance given by African States to fundamental principles and rights at work. The ILO should increase its efforts to provide technical assistance with a view to facilitating further ratifications.
- 57.** The representative of the Government of the Czech Republic stated that Cabinet had approved the proposal for ratification of Convention No. 138 on 19 July 2006, and that this proposal was currently debated by Parliament.
- 58.** The representative of the Government of the Republic of Korea stated that his country was in the process of ratifying Convention No. 29 and thanked the Office for the assistance it had provided.
- 59.** The Worker members commended the efforts made in the African region in ratifying the Conventions, and noted in contrast the status of ratifications in Asia. Regarding the importance of technical assistance in the context of promoting ratification, the Worker members expressed concern that the Programme and Budget for 2008-09 did not appear to give priority to promoting the ratification of the fundamental Conventions. They hoped that the ratification campaign would not be diluted in the coming biennium.
- 60.** The Committee noted the information in the document and the comments made.

## **VI. Choice of Conventions and Recommendations on which reports should be requested in 2008 and 2009 under article 19 of the Constitution (Seventh item on the agenda)**

- 61.** The Committee had before it a paper on the choice of Conventions and Recommendations on which reports should be requested in 2008 and 2009 under article 19 of the Constitution.<sup>7</sup>
- 62.** The Worker members stated that General Surveys played an important role in the standards system as monitoring relied on information. Appendix II of the paper contained valuable information on up to date instruments, including specific requests for information formulated by the Working Party on Policy regarding the Revision of Standards (hereafter, the “Cartier” group) but instruments in status quo should also have been included. Concerning footnote 1 of Appendix II, they recalled that the conclusions of the Cartier group were based on consensus. As regards the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166), they agreed that they could not agree. As a result, those instruments did not fit into any of the categories. They regretted that the Convention was not part of the list, as it dealt with one of the most important issues in working life and they worried that the ILO was losing sight of it.
- 63.** The Worker members considered that many of the proposals had merit. On the basis of the criteria proposed on rate of ratification, whether or when a General Survey had been done before and if a request for information from the Cartier group existed, their preference was for General Surveys on: (i) Labour Relations (Public Service) Convention, 1978 (No. 151), and Labour Relations (Public Service) Recommendation, 1978 (No. 159), and Collective Bargaining Convention, 1981 (No. 154), and Collective Bargaining Recommendation, 1981 (No. 163): these Conventions had low levels of ratification, and the rights of workers in the public sector were highly topical in both developed and developing countries; (ii) Workers’ Representatives Convention, 1971 (No. 135), and Workers’ Representatives Recommendation, 1971 (No. 143); and (iii) Occupational Safety and Health Convention, 1981 (No. 155), and its Protocol of 2002, and Occupational Safety and Health Recommendation, 1981 (No. 164). Child labour should also be mentioned. Other proposals were interesting but may be limited in scope.
- 64.** The Worker members indicated that there was an agreement with the Employer members that priority should be given to industrial relations (public sector) – Conventions Nos. 151 and 154 – for a General Survey in 2008, and to occupational safety and health – Convention No. 155 and its Protocol of 2002, and Recommendation No. 164 – for 2009.
- 65.** The Employer members confirmed their agreement on the two subjects mentioned by the Worker members. They also considered that while the child labour Conventions were well-ratified, there was still much work to be done and a General Survey would provide an opportunity to take a fresh look at these instruments.
- 66.** The representative of the Government of the United States stated that all of the subjects had merit and her Government would not object to any of them. In selecting the best topics, however, she suggested that an additional determining factor should be whether the topic is of broad interest and applicability. Narrow topics were not strong candidates for a

<sup>7</sup> GB.297/LILS/7.

General Survey. She favoured items relating to occupational safety and health and part-time work. It would be important to clarify the complementarities between Convention No. 155 and the new promotional framework adopted at the last Conference. A General Survey on the Part-Time Work Convention, 1994 (No. 175), would be a useful and timely supplement to the recent Survey on hours of work.

- 67.** Looking to the future, the speaker considered that the two proposals relating to fundamental Conventions were also of interest. General Surveys on the fundamental Conventions had always been extremely useful documents, and they tended to have a longer shelf life than those on technical subjects. She expressed the hope that a new Survey on equal remuneration would take better account of alternative means of implementing the concept of equal pay for work of equal value. Also it might be helpful to have a clarification by the Committee of Experts relating to the determination of hazardous work that is solidly rooted in the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and their negotiating histories.
- 68.** The representative of the Government of Germany recalled that the matter of social protection had been considered in the ESP Committee and the need for establishing protection systems had been recognized. There was an increased awareness of the global question of lack of social security. The G8 meeting of Labour Ministers in 2007 will discuss the social dimension of globalization, including the issue of sustainable protection systems. There was a need for action at the global level concerning this topic. Her country therefore supported a General Survey on the Social Security (Minimum Standards) Convention, 1952 (No. 102), for 2008, which is a fundamental instrument in this area. This important Convention had only received 42 ratifications. There was urgency in examining the obstacles to its ratification to enable the Office to provide the necessary technical assistance.
- 69.** The representative of the Government of France recalled that the choice of instruments on which reports should be requested in 2008 and 2009 under article 19 of the Constitution was of great significance. His Government had chosen two subjects: equal remuneration and asbestos. In November 2004 it had already expressed an interest in seeing a General Survey on the first subject and its related instruments (the Equal Remuneration Convention, 1951 (No. 100), and the Equal Remuneration Recommendation, 1951 (No. 90)). The last General Survey on the matter had been carried out 20 years before. Furthermore, even though there were still disparities between the remuneration of men and that of women, there had been a marked change in the trend in legislation, policies and practices over the last few years and the gap was being reduced. The Asbestos Convention, 1986 (No. 162), and Asbestos Recommendation, 1986 (No. 172), had been chosen because the issue was both serious and urgent. Today, only one worker in ten worked in a country where asbestos was banned. Moreover, even where it was banned, the asbestos installed previously still posed a threat for workers in a number of economic sectors. The ILO's constituents as a whole would benefit from an in-depth discussion on national measures and practices aimed both at eliminating asbestos worldwide and at protecting workers better. A discussion of this kind could give a further boost to the resolution on asbestos adopted by the Conference in June 2006.
- 70.** Her Government was particularly keen to see those two subjects addressed because the challenges they presented were the same for all countries, including the most developed countries. Thanks to a comparative study of the different approaches to dealing with the difficulties involved, it was possible to identify some good practices. General Surveys were a means of analysing the nature of the obstacles to the ratification or application of these instruments and the type of action needed to overcome them. They helped to assess the relevance of international labour standards and to enhance their impact. Her

Government remained open as to the order in which the instruments relating to equal remuneration and asbestos were taken up in the reports under article 19. Finally, her Government continued to value the machinery set up under that article, which would undoubtedly be called upon to play a more important role after the proposed discussion at the 96th Session (June 2007) of the International Labour Conference on *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*.

71. The representative of the Government of Mexico said that reports under article 19 of the ILO Constitution should be prepared for 2008 on Convention No. 155 and its accompanying Recommendation No. 164. She was pleased to note that she shared the same position as the Workers' and Employers' groups, although there was a difference of opinion as to the year of submission. An analysis of Convention No. 155 and its Recommendation would assist in overcoming the obstacles to ratification and might possibly contribute to the ratification of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). She was of the opinion that the 2009 report should be on Convention No. 102, on which there had been no General Survey since 1961. The very small number of countries that had ratified that Convention, despite its importance, pointed to a need to look into the difficulties that States had encountered in applying or ratifying it.
72. The representative of the Government of the Netherlands supported a General Survey on social security, observing that it had been a long time since the last Survey on this topic. She was also in favour of Surveys on occupational safety and health and child labour.
73. The representative of the Government of the Bolivarian Republic of Venezuela stressed the importance of social security in Venezuela, as its system was currently being adapted to the 1999 Constitution. He supported the proposal for a General Survey on Convention No. 102.
74. The representative of the Government of Nigeria, speaking on behalf of the Africa group, noted that the last Survey on child labour had been in 1981 and, because of the high level of child labour in many African countries, a General Survey in 2008 would be helpful, as would a Survey on occupational safety and health in 2009. With regard to the latter topic, she noted the wide range of issues covered under the decent work country programmes.
75. The representative of the Government of the Russian Federation supported a General Survey on the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), for 2008 and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), for which there had never been a General Survey, for 2009.
76. The representative of the Government of Morocco supported the statement made on behalf of the Africa group and indicated the instruments with which her Government was particularly concerned, namely those related to occupational safety and health: Convention No. 155 and its Protocol of 2002 and Recommendation No. 164. Convention No. 155 was closely linked to Convention No. 187, and a General Survey would certainly throw more light on the complementarity of the two instruments.
77. The representative of the Government of Brazil stated that 2006 had seen the adoption of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which was linked to Convention No. 155 and to Convention No. 162. At the last Session of the Conference, the Committee on Safety and Health had adopted a resolution concerning asbestos which had attracted a lot of interest in Brazil. He felt that 2008 would be the right moment to carry out a General Survey on Conventions Nos. 155 and 162. He also proposed a General Survey on social security (Convention No. 102) in 2009,

emphasizing the importance of social security for regional integration. General Surveys were an invaluable source of information.

78. The representative of the Government of El Salvador supported a General Survey on Convention No. 155 in 2008 and on Convention No. 102 in 2009.
79. The representative of the Government of the Czech Republic was in favour of a General Survey on Convention No. 102 in 2008 and Convention No. 100 in 2009.
80. The representative of the Government of Canada supported a Survey on Convention No. 155 and Recommendation No. 164 in 2008 and on Convention No. 175 in 2009.
81. The representative of the Government of China supported a General Survey on Convention No. 102 in 2008 and Convention No. 100 in 2009.
82. The representative of the Government of Argentina supported a General Survey on Convention No. 155 in 2008 and on Convention No. 102 in 2009.
83. The representative of the Government of the Islamic Republic of Iran supported a General Survey on Convention No. 155 in 2008 and Convention No. 102 in 2009.
84. The Worker members thanked the Governments for their interventions. They noted that child labour was a matter of concern for all of them. Regarding Convention No. 100, they mentioned the important proposal on gender equality contained in the paper on the 2009 Conference agenda submitted to the Governing Body. They indicated that they could accept to have the General Survey on Convention No. 155 in 2008 and the one on Convention No. 151 and Convention No. 154 in 2009.
85. The Employer members agreed on this order.
86. This choice was adopted by the Committee.
87. *The Committee recommends that the Governing Body invite Governments to submit reports under article 19 of the Constitution:*
  - (a) *in 2008, on the Occupational Safety and Health Convention, 1981 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164); and*
  - (b) *in 2009, on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163).*



## VII. Other questions

### Provisional agenda of the next session of the Committee on Legal Issues and International Labour Standards

88. A representative of the Director-General (Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector), in accordance with usual practice, summarized the items that would be put before the Committee at its next session, as far as had already been determined: additional considerations regarding resolutions in the International Labour Conference; improvements in the standards-related activities of the ILO; general status report on ILO action concerning discrimination in employment and occupation; form for reports on the application of unratified Conventions (article 19 of the Constitution): the Occupational Safety and Health Convention, 1981 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164); form for reports on the application of ratified Conventions (article 22 of the Constitution): Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); report of the joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART).

Geneva, 14 November 2006.

*Points for decision:* Paragraph 32;  
Paragraph 48;  
Paragraph 87.



## Appendix

### Table of ratifications and information concerning the ILO's fundamental Conventions (as at 10 November 2006)

No. 29	–	Forced Labour Convention, 1930
No. 87	–	Freedom of Association and Protection of the Right to Organise Convention, 1948
No. 98	–	Right to Organise and Collective Bargaining Convention, 1949
No. 100	–	Equal Remuneration Convention, 1951
No. 105	–	Abolition of Forced Labour Convention, 1957
No. 111	–	Discrimination (Employment and Occupation) Convention, 1958
No. 138	–	Minimum Age Convention, 1973
No. 182	–	Worst Forms of Child Labour Convention, 1999

### Explanation of symbols in the table

- X Convention ratified.
- O Formal ratification process already initiated (with or without mention of time frame); approval of ratification by the competent body, although the Director-General has not yet received the formal instrument of ratification or it is incomplete (concerns chiefly Convention No. 138) or is a non-original copy; bill currently before the legislative body for approval.
- ▲ Ratification will be examined after amendment/adoption of a Constitution, Labour Code, legislation, etc.
- Convention currently being studied or examined; preliminary consultations with the social partners.
- Divergences between the Convention and national legislation.
- ◆ Ratification not considered/deferred.
- No reply, or a reply containing no information.

All ILO member States not listed in this table have ratified all eight of the fundamental Conventions.

Member State	Forced labour		Freedom of association		Equal treatment		Child labour	
	C. 29	C. 105	C. 87	C. 98	C. 100	C. 111	C. 138	C. 182
Afghanistan	●	X	●	●	X	X	●	●
Australia	X	X	X	X	X	X	◆	○
Bahrain	X	X	●	●	●	X	●	X
Bangladesh	X	X	X	X	X	X	◆	X
Brazil	X	X	▲	X	X	X	X	X
Canada	◆	X	X	■	X	X	■	X
Cape Verde	X	X	X	X	X	X	○	X
China	●	●	◆	◆	X	X	X	X
Cuba	X	X	X	X	X	X	X	▲
Czech Republic	X	X	X	X	X	X	○	X
Timor-Leste	●	●	●	●	●	●	●	●
Eritrea	X	X	X	X	X	X	X	○
Estonia	X	X	X	X	X	X	○	X
Gabon	X	X	X	X	X	X	○	X
Ghana	X	X	X	X	X	X	○	X
Guinea-Bissau	X	X	○	X	X	X	○	○
Haiti	X	X	X	X	X	X	●	●
India	X	X	■	■	X	X	■	▲
Iran, Islamic Republic of	X	X	▲	▲	X	X	●	X
Iraq	X	X	▲	X	X	X	X	X
Japan	X	●	X	X	X	●	X	X
Jordan	X	X	●	X	X	X	X	X
Kenya	X	X	▲	X	X	X	X	X
Kiribati	X	X	X	X	○	○	○	○
Korea, Republic of	▲	■	▲	▲	X	X	X	X
Kuwait	X	X	X	○	○	X	X	X
Lao People's Democratic Republic	X	●	●	●	●	●	X	X
Lebanon	X	X	▲	X	X	X	X	X
Liberia	X	X	X	X	○	X	●	X
Madagascar	X	○	X	X	X	X	X	X
Malaysia	X	▲	◆	X	X	◆	X	X
Mexico	X	X	X	◆	X	X	■	X
Montenegro	●	●	●	●	●	●	●	●
Morocco	X	X	▲	X	X	X	X	X
Myanmar	X	◆	X	●	◆	◆	◆	●
Namibia	X	X	X	X	◆	X	X	X

Member State	Forced labour		Freedom of association		Equal treatment		Child labour	
	C. 29	C. 105	C. 87	C. 98	C. 100	C. 111	C. 138	C. 182
Nepal	X	●	●	X	X	X	X	X
New Zealand	X	X	▲	X	X	X	●	X
Oman	X	X	●	●	●	●	X	X
Qatar	X	●	●	●	●	X	X	X
Samoa	O	O	O	O	O	O	O	O
Saint Lucia	X	X	X	X	X	X	●	X
Saudi Arabia	X	X	●	●	X	X	●	X
Sierra Leone	X	X	X	X	X	X	O	O
Singapore	X	◆	◆	X	X	◆	X	X
Solomon Islands	X	O	O	O	O	O	O	O
Somalia	X	X	–	–	–	X	–	–
Sudan	X	X	●	X	X	X	X	X
Suriname	X	X	X	X	▲	▲	▲	X
Thailand	X	X	■	■	X	●	X	X
Turkmenistan	X	X	X	X	X	X	O	●
United Arab Emirates	X	X	◆	◆	X	X	X	X
United States	◆	X	◆	◆	◆	O	◆	X
Uzbekistan	X	X	O	X	X	X	O	O
Vanuatu	X	X	X	X	X	X	O	X
Viet Nam	▲	▲	●	●	X	X	X	X