



## 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 14 November 2008. It elected the following Officers:

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

*Employer Vice-Chairperson:* Mr J. de Regil (replaced at the sitting by Mr V. Van Vuuren for International Labour Standards and Human Rights and Ms L. Horvatic for Legal Issues)

*Worker Vice-Chairperson:* Ms H. Yacob

2. The Chairperson, supported by the Vice-Chairpersons, proposed modifying the order of the agenda. The representative of the Government of France, speaking on behalf of the European Union, as well as the representative of the Government of Austria, did not oppose the proposal but regretted the lack of advance notice and discussion.

## First part: Legal issues

### I. **Legal and practical measures relating to the representation of Employers' and Workers' delegates at the International Labour Conference** (First item on the agenda)

3. The Committee had before it a document<sup>1</sup> containing proposals on legal and practical measures relating to the representation of Employers' and Workers' delegates at the International Labour Conference.
4. In presenting the document, the Legal Adviser recalled that the Credentials Committee of the 96th Session (2007) of the International Labour Conference had requested the Governing Body to examine the reasons for the discrepancy between the number of accredited Employers' and Workers' delegates and the number of those who actually registered at the Conference. He summarized the content of the document and referred to the three items of the point for decision.
5. The Worker members supported the point for decision. Referring in particular to the instances mentioned in the document in which Workers' delegates had been prevented from attending the Conference, they expressed the hope that governments would in the future always respect the right of workers to participate in the Conference.
6. The Employer members, supporting the point for decision in all its parts, noted the significant increase in participation in the Conference from 2000 to 2008. While they trusted that the increase reflected growing interest in the work of the ILO, they wondered whether some categories of participants had been growing more than others, whether further increases were to be expected, and whether that trend had consequences for the functioning of the Conference. With regard to the discrepancy between accredited and registered delegates, its effects were apparently under control, in particular since the 2008 amendment to the Standing Orders of the International Labour Conference allowed for an earlier nomination of the Credentials Committee. Nevertheless, as the document noted, the "artificially created presence" at the Conference, caused by the collection of badges by proxy for persons not actually in Geneva, remained a problem. The Employer members endorsed the statement by the Credentials Committee quoted in the document recommending the restriction of the practice of collecting badges for other participants.

<sup>1</sup> GB.303/LILS/1(Rev.).

They asked the Office to adjust its practice of delivering Conference badges to the permanent missions accordingly. The effectiveness of that measure should be assessed in due time.

7. The Employer members further encouraged the Office to continue the recent practice of making available during the Conference an electronic list of all the delegates and their substitutes attending the Conference, to help delegations to nominate substitutes for absent titular delegates. Regarding the problem concerning the unannounced departure of delegates, the Employers wondered whether a roll-call immediately preceding a vote could lead to de-registration on a temporary basis of those absent. Or could registration possibly occur upon entering the plenary rooms by means of an electronic chip? Would it be possible to account for the absentees when calculating the quorum? More generally, which possibilities existed to de-register participants without their agreement or even against their will?
8. The Employer members approved of the suggestions in the document to discuss new measures for situations in which Workers' or Employers' delegates had been prevented by member State authorities from attending the Conference. Perhaps the Credentials Committee could be given a third tool, which could be called a "plea in absence": after a preliminary examination of such a situation, the Committee could forward the matter to the Officers of the Conference, and the President of the Conference could request the Government in question to eliminate all obstacles to the presence of the concerned delegate. If that remained unsuccessful, the Credentials Committee could still be asked to monitor the situation at the following year's session of the Conference.
9. The Employer members also expressed concern over the imbalance in delegations in the number of Employers' advisers on the one hand and Workers' advisers on the other, whose travel and subsistence expenses were covered by their governments. They wished to see equal coverage for Employers' advisers and, in any event, suggested the possible use of technology to obtain immediate information on whether governments paid the travel and subsistence expenses of the Employers' and Workers' delegates and advisers.
10. The representative of the Government of Nigeria, speaking on behalf of the Africa group, fully supported the point for decision. The speaker noted the possible consequences on the quorum of the discrepancy between accredited and registered persons which, in her view, had been addressed by the recent amendment to the Conference Standing Orders. The problem of artificially created presence at the Conference should be addressed by restricting the practice of allowing permanent missions to collect their delegation's Conference badges. The publication of an electronic list of the delegates and substitutes was also supported as a practical means of helping governments to utilize the voting rights of absent delegates. The speaker wondered how the requirement that delegates notify their departure from the Conference could apply in the case of the temporary absence of delegates. As to delegates being prevented from attending the Conference, the Africa group would welcome specific proposals to be discussed at the following session of the Governing Body.
11. The representative of the Government of Germany, speaking on behalf of the group of industrialized market economy countries (IMEC), supported the point for decision and recommended that the Office consider measures to ensure that delegates gave timely notice of their departure from the Conference, as that had a potential impact on the accuracy of the quorum. The speaker noted with concern the recent cases in which delegates had been deliberately prevented from attending the Conference by their governments, for which there was currently no automatic sanction. The Office was therefore requested to propose measures to address such situations.

12. The representative of the Government of Uruguay, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), recalled that the practice of allowing permanent missions to collect the badges of Employers' and Workers' delegates had been followed in order to relieve the delegates from such a task. He clarified that the examples recorded in the document constituted isolated instances. Those cases had been resolved satisfactorily in the framework of the mandate of the Credentials Committee and they did not warrant general assertions as to the behaviour of the governments involved. Any other response to such incidents would belong to the supervisory bodies of the respective Conventions concerned, and the Credentials Committee could not assume their functions. As to the possibility of an automatic sanction mechanism as mentioned in paragraph 15 of the document, the speaker questioned the basis for such a mechanism within the ILO's monitoring system and opposed its application to the Credentials Committee mandate. The isolated instances under discussion could be resolved through appropriate technical assistance to the concerned governments using existing mechanisms. Therefore, his group did not support the preparation of proposals envisaging an enlarged mandate for the Credentials Committee nor the consideration of amending the ILO Constitution or the Standing Orders of the Conference to that effect. While he wished to have that position reflected on the record, his group would not obstruct the decision of the Committee.
13. Addressing the issues raised in the discussion, the Legal Adviser observed that no forecast could be made as to whether the increase in participation in the Conference would continue. That phenomenon mainly concerned the government part of delegations and in particular the category of "other persons attending the Conference". Regarding the suggestions made to address the problem of artificial presence, a roll-call or registration upon entering the meeting room would not resolve the problem since, under the ILO Constitution, the quorum was based on attendance at the session of the Conference as a whole and not on actual presence at the vote. Practical solutions to facilitate the de-registration of delegates had been applied in the past. As mentioned in the first report of the Selection Committee to the 97th Session of the Conference, one of the two Government delegates of a country could report the departure of the other Government delegate, and the secretariats of the Employers' and Workers' groups could give notice of the final departure of members of their groups. The Legal Adviser also recalled that a specific notification form regarding temporary departures of delegates was available from the Credentials Committee secretariat.
14. Responding to the clarifications provided by the Legal Adviser, the Employer Vice-Chairperson explained that her ideas concerning the quorum assumed that it might be possible to interpret the concept of attendance at the Conference found in article 17(3) of the Constitution as meaning attendance at the sitting when the vote was taken.
15. *The Committee recommends to the Governing Body that it:*
  - (a) *support the recommendation and measures indicated in paragraph 9 of the reference document GB.303/LILS/1(Rev.) to restrict the practice of allowing permanent missions to collect Conference badges for the whole delegation, and to request them not to collect badges for the Employers' and Workers' delegations, unless they have been specifically authorized in writing by the Employers and Workers concerned;*
  - (b) *encourage the Office to continue the practice indicated in paragraph 12 of the reference document GB.303/LILS/1(Rev.) to make publicly available, at the end of the second week of the Conference, an electronic version of the list of all delegates and their substitutes who are attending the Conference and entitled to vote; and*

- (c) *request the Office to prepare, in light of the guidance provided during the debate of the Committee, a document for the next session of the Governing Body reflecting specific proposals as formulated in paragraphs 16, 17 and 18 of the reference document GB.303/LILS/1(Rev.) to address situations in which Employers' or Workers' delegates are prevented by member State authorities from attending the Conference.*

**II. Revision of the Rules for Regional Meetings:  
Introductory Note**

(Second item on the agenda)

16. The Committee had before it a document<sup>2</sup> proposing a revised Introductory Note to the Rules for Regional Meetings (2008), which was supported without discussion.
17. *The Committee recommends to the Governing Body to approve the revised Introductory Note, as contained in the appendix to the present report, and to publish it together with the Rules for Regional Meetings (2008).*

<sup>2</sup> GB.303/LILS/2.

## Appendix

### Rules for Regional Meetings

#### *Introductory Note*

For budgetary reasons, the Governing Body decided at its 264th Session (November 1995) to replace the Organization's Regional Conferences by shorter Regional Meetings with a single agenda item, which would still be considered as Regional Conferences for purposes of article 38 of the ILO Constitution. On the authority conferred to it by the International Labour Conference, the Governing Body adopted a set of new rules on an experimental basis at its 267th Session (November 1996). Based on experience with the new rules drawn from five Regional Meetings, the Governing Body adopted, at its 283rd Session (March 2002), a revised version of the Rules, which was confirmed by the 90th Session (June 2002) of the Conference. Taking account of further experience gained from five Regional Meetings since June 2002, the Governing Body adopted a second revised version of the Rules in its 301st Session (March 2008), which were confirmed by the 97th Session (June 2008) of the Conference. The Governing Body also agreed to the following guidelines to accompany the Rules.

#### 1. Purpose and length of Regional Meetings

Regional Meetings offer the opportunity for tripartite delegations to express their views on the programming and implementation of the ILO's regional activities. Group meetings are held before the start of the discussion in plenary of the single agenda item related to ILO activities in the region concerned. Groups may meet at any other time at their request. The Meeting lasts four days unless the Governing Body decides otherwise.

#### 2. Date, frequency and place of Regional Meetings

Normally, a Regional Meeting is held each year in one of the four regions in the following order: Asia and the Pacific, the Americas, Africa and Europe. Regional Meetings are in principle held in the country where the relevant ILO regional office is located. Any member State hosting a Regional Meeting shall guarantee at least the level of protection afforded under the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I concerning the ILO.

#### 3. Composition

Subject to the discretion of the Governing Body, the composition of each Regional Meeting is determined on the basis of States and territories (or States responsible for the territories) which are served by the following four ILO regional offices: Regional Office for Asia and the Pacific (including the States covered by the Regional Office for Arab States); Regional Office for the Americas; Regional Office for Africa; and Regional Office for Europe.

Article 1 of the Rules provides for the composition of the delegations of States or territories invited to the Meeting. As regards advisers, account should be taken of the fact that there is only one item on the agenda. Additional advisers may be appointed in the delegation of a State responsible for a territory that has not sent a separate tripartite delegation to the Meeting.

Member States from a different region, non-member States, official international organizations or non-governmental international organizations of universal or regional character may also be represented at Regional Meetings on the basis of individual or

standing invitations of the Governing Body. Requests to be represented at Regional Meetings should accordingly reach the Office at the latest before the opening of the Governing Body session preceding the Regional Meeting concerned. Eminent public figures and Officers of the Governing Body who are not accredited as delegates to the Regional Meeting may also attend the Meeting.

#### 4. Right to address the Meeting and conduct of business

Under article 10, no person may address the Meeting without the permission of the Chairperson, with priority given to delegates (or their substitutes). Without prejudice to the flexibility afforded to the Officers of the Meeting to discharge their duties under article 6, paragraph 5, the time limit for speeches is in principle five minutes.

#### 5. Credentials

In view of the short duration of the Meetings, the credentials of delegates and their advisers must be submitted 15 days before the opening date of the Meeting (article 1, paragraph 3). A preliminary list of participants is published electronically a week before the opening of the Meeting. Two additional lists are made available at the Meeting: a provisional list of credentials of delegations by the scheduled time for the opening of the Meeting, and a final list of accredited delegations on the morning of the last day of the Meeting. The Office will also publish electronically on the last day a list of persons who actually registered at the Meeting.

Under article 9, the Credentials Committee is competent to receive and examine objections alleging non-observance of article 1, paragraph 2 (designations made in agreement with the most representative organizations of employers and workers in the State or territory concerned); time permitting, complaints alleging the non-payment of travel and subsistence expenses (article 1, paragraph 1); and communications.

Objections are to be submitted within two hours after the scheduled time for the opening of the Meeting, although the Committee may find valid reason to accept a late objection (article 9, paragraph 3(a)). In order to facilitate the work of the Credentials Committee under time constraints, objections (and complaints) should be submitted as soon as possible, even before the publication of the name of the delegate or adviser whose credentials are impugned.

The Credentials Committee submits a report to the Meeting under article 9, paragraph 4 which shall be brought to the attention of the Governing Body. There is no discussion of the report at the plenary of the Meeting.

#### 6. Form, nature and evaluation of results

The decisions of Regional Meetings normally take the form of conclusions, reports, or resolutions relating to the item on the agenda (article 3). Decisions will be taken by consensus whenever practicable or, if not possible, normally by show of hands (article 12, paragraphs 3 and 4). While there is no provision for a record vote or secret ballot, the Rules do not exclude voting by such means.

The decisions of the Meeting are submitted by the Office to the Governing Body at the earliest session after the Regional Meeting. The Governing Body may make observations on the results, decide on the implementation of action called for by the Meeting and request the Office to report on the matter by a certain time, or take such other action as may be appropriate.

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

### **III. Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution** (Sixth item on the agenda)

18. The Committee had before it a document<sup>3</sup> concerning the choice of instruments on which reports should be requested under article 19 of the Constitution and proposals for a General Survey concerning employment instruments in light of the 2008 Declaration.
19. A representative of the Director-General (Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department (NORMES)) in presenting the document emphasized its importance for the following reasons: (i) it was the first concrete proposal tabled as a result of the 2008 Declaration on Social Justice for a Fair Globalization, only five months after its adoption; (ii) it sought not only to preserve but also to reinforce the function of General Surveys, which would continue to be based on information coming from reports submitted under article 19 of the Constitution (non-ratified Conventions and Recommendations) as well as reports under article 22 and article 35 (ratified Conventions); the General Survey was an invaluable tool for the work of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the tripartite constituents but also for the realization of the Decent Work Agenda. In this last respect, a General Survey on employment would be timely in the context of the current financial crisis; (iii) the paper called for a decision to be taken by the Governing Body at its current session as to the General Survey that would be carried out in 2009 by the CEACR and discussed in 2010 by the Conference Committee on the Application of Standards. The LILS Committee was therefore confronted with a challenging task. She regretted that sufficient tripartite consultations on this specific subject could not be carried out beforehand due to time constraints as the Office had had to quickly prepare a draft following the adoption of the 2008 Declaration and the consultations on its follow-up in mid-September. As a result of this new approach, the Office had an increased responsibility to assist member States in the submission of information for the purpose of the General Survey. Both the CEACR, which would meet just after the Governing Body and the Conference Committee on the Application of Standards, would be duly informed of the discussion held within the LILS Committee. In particular, the special sitting between the Experts and the two Vice-Chairpersons of the Conference Committee on the Application of Standards, that will take place during the next session of the CEACR, would provide an excellent opportunity to discuss the implications of the 2008 Declaration on the work of both Committees and the comments made thereon by the Governing Body.
20. With respect to the content of the proposal before the Committee, the speaker recalled that General Surveys represented an invaluable tool in gathering objective information analysed by the CEACR and discussed by members of the tripartite Conference Committee on the Application of Standards. The 2008 Declaration mandated the introduction of a recurrent item on the agenda of the Conference to review the trends relating to each strategic objective. It was clear throughout the long process of tripartite consultations, which preceded the adoption of the Declaration, that the normative component of the recurrent item was to be based on information contained in the General Survey. In light of

<sup>3</sup> GB.303/LILS/6.



the follow-up to the Declaration (Section I(B)) which indicated that “some adaptation of existing modalities of application of article 19” might be entailed, two changes were proposed: (i) to align the topic of the General Survey with that of the recurrent item; subject to the Governing Body’s decision, the first recurrent item to be discussed by the Conference in 2010 would be on employment, hence the proposed topic of the General Survey for 2010; (ii) a proposed new design for the article 19 questionnaire.

- 21.** The proposed new questionnaire took into account the constituents’ comments expressed in the context of the tripartite consultations last September and was the result of close in-house consultations, involving the Employment Sector. This questionnaire would apply first and foremost to the information to be submitted by member States which had not ratified the relevant Conventions. For member States that had ratified the relevant Conventions, the questionnaire would only concern the Recommendations covered by the General Survey, since the CEACR would continue to use the information submitted in their reports under articles 22 and 35 of the Constitution. Keeping in mind the objective of the recurrent item, as spelled out in the 2008 Declaration, the proposed new questionnaire would cover a larger number of instruments to allow for a comprehensive overview of all instruments relating to employment. While the number of instruments on which reports have been requested under article 19 have varied from one to eight for past General Surveys, requests for the first reports under article 19 of the Constitution covered 12 instruments concerning different topics and the 1969 General Survey covered 17 Conventions. The new approach to the questionnaire aimed to: (i) better respond to the objective of article 19, which was to obtain information on law and practice and obstacles to ratification, as well as the effect given or proposed to be given to Conventions and Recommendations; (ii) provide useful information by focusing on understanding member States’ needs, i.e. technical cooperation needs and suggestions for standards-related activities (for the first time member States would have the opportunity to state their position on these issues in an institutional framework guaranteeing proper follow-up); (iii) ensure that the workload on member States would not be increased. The Office had limited the number of questions to topics on which it could not collect the information by its own means. The questionnaire was more demand-driven as governments were explicitly asked to evaluate ILO instruments and identify their requests for technical cooperation. The CEACR would continue to carry out the specific mandate it had been given by the Conference and the Governing Body, in particular with respect to General Surveys.
- 22.** She underlined that the proposed questionnaire took the priority Convention No. 122 and related Recommendations as the umbrella instruments. Three different options were set out in the paper for the number of instruments to be covered: (i) nine instruments (four Conventions and five Recommendations); (ii) 18 instruments (seven Conventions and 11 Recommendations); (iii) 21 instruments (nine Conventions and 12 Recommendations).
- 23.** It was expected that the new approach would: (i) streamline the information, as it would allow for an optimum use of the information contained in the General Survey; (ii) allow for an evaluation of ILO standards-related activities, by identifying gaps in standard setting and major gaps in implementation; (iii) enable the outcome of the General Survey to be taken into account in the recurrent report thus giving an institutional follow-up to the General Survey and ensuring that its impact would not only reach the supervisory system but also all the ILO standards-related activities; (iv) enhance the value of General Surveys. The CEACR would continue to develop its legal analysis of the implementation of the Conventions within the framework of the General Surveys and the Office could take steps to highlight this specific and valuable information, by making it for example available through its databases or other means, in a more user-friendly manner.
- 24.** She concluded by placing emphasis on the experimental nature of the new questionnaire and underlining that it represented an opportunity to respond to the Declaration’s call for

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an integrated approach in helping Members meet the ILO objectives using all its means of action.

25. Following the presentation by the Office, the Worker Vice-Chairperson wished to ask a few questions to clarify some points raised by the Office. First, she stressed the importance of comments made by the CEACR in General Surveys with respect to jurisprudence at both the national and international level and wanted to know if the article 19 questionnaire, in its current form, would dilute the impact of the General Survey in these areas. Second, given that the General Survey would be used to provide information to both the CEACR as well as the Conference Committee in the context of a recurrent discussion, would this undermine and weaken the authority of the CEACR and the Conference Committee and multiply the supervisory mechanisms? Third, would the revised format lead to an increase in the reporting obligations of member States? Fourth, were the questions oversimplified as there were no clear linkages between these and the provisions in the Conventions and Recommendations? Fifth, was this process cast in stone? Was it possible to come back to this question in one year and refine, review or even go back to the status quo with respect to formulating article 19 questionnaires?
26. The representative of the Government of Lebanon was concerned that the questionnaire would lead to an increase in reporting obligations for member States and asked the Office to clarify what exactly their obligations were with respect to reporting on Recommendations.
27. The representative of the Government of Canada noted that paragraph 12 of the document provided that each question would require a simple yes/no answer and a space would also be provided for comments. She wondered if it was enough to reply yes or no and how these simplified questions would contribute to an in-depth General Survey.
28. The representative of the Government of Austria stated that Part II(A) of the current questionnaire contained some ambiguity with respect to the Recommendations as these instruments were not meant to be ratified or implemented as provided for in the text. She asked the Office to clarify this point.
29. The representative of the Government of India noted that the one cardinal principle in the 2008 Declaration was that changes made to article 19 reports would not increase the reporting burden of member States. He asked the Office to clarify if this would be the case with the new report form. He also wondered why the discussions concerning a General Survey on employment were taking place in the LILS Committee and not in the Committee on Employment and Social Policy (ESP) as the objective was to promote the creation of employment and not ratify Conventions.
30. The representative of the Director-General explained that the primary objective of the proposed questionnaire was to bring together information provided by both article 19 and 22 reports in order to get a global picture of the application of both ratified and unratified Conventions and the effect given to Recommendations with respect to a strategic objective. The CEACR would continue to carry out its mandate in ensuring the legal analysis of the implementation of international labour standards in national law and in practice, both through its comments on the application of ratified Conventions published in its annual reports and through the General Surveys which, in addition, covered the effect given to non-ratified Conventions and Recommendations. The Office also played an important role in collecting official and up to date information, a role that would now be enhanced. As regards the question about a possible dilution of the General Surveys, she indicated that the CEACR would focus on a number of key provisions in the instruments chosen. The role of the CEACR and the Conference Committee on the Application of Standards would be strengthened by this approach rather than weakened as, in addition to its usual functions

regarding legal analysis, a new element would be the follow-up to their recommendations and conclusions. The technical committee that would discuss the report on the recurrent item would need to take their recommendations, conclusions and comments into account in the plan of action. The proposed new approach should also increase the impact of the work of the two supervisory bodies as they would be able to give their opinion on the implementation of standards in relation to the strategic objective in question and identify and address the gaps. As for increasing the reporting burden of member States, those that had ratified the Conventions in question would only have to provide information on the effect given to Recommendations. She reiterated that the new questionnaire would request information not only on implementation, but also on obstacles to ratification, standard-setting proposals and information on member States' needs with respect to technical cooperation. Finally, she stated that the need to reformulate Part II(A) had been noted.

- 31.** The Worker Vice-Chairperson welcomed the tripartite consultation held in September. She recalled that the follow-up to the 2008 Declaration stated that “Some of the measures to assist the Members may entail some adaptation of existing modalities of application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States.” Following the presentation of the Office, she agreed with the alignment of General Surveys under article 19 of the Constitution with the cyclical reviews, in line with the 2008 Declaration, covering all or most of the international labour standards under each strategic objective. General Surveys were an important document, and an invaluable tool for gathering information. They were regularly used as authoritative documents by different national tribunals to interpret the meaning of ratified Conventions or to fill judicial gaps, as well as by the social partners to combat and preempt unfair legislative moves by their governments. Governments also often use these surveys to improve labour legislation. Finally, they also provided rich material for ILO officials in targeting technical cooperation, promoting ratification and providing assistance in the drafting of labour laws.
- 32.** She noted however, that nothing remained static. A few months ago, the world seemed rosy and now, everyone was holding their breath and confronted by an uncertain economic future. A good lesson could be learned from this: less or no regulation was not good as left to their own devices, companies looked for short-term gains and not at building sustainability. This reinforced the importance of the work of the ILO in ensuring that international regulations were given a high priority. Hence the proposal of the Office merited closer consideration. There was a need to improve the impact and efficiency of the supervisory mechanisms and if this suggestion went towards addressing the problem, then it would be good for everyone.
- 33.** In terms of the questionnaire, the Workers' group had a few suggestions. First, a general question concerning consultations with organizations of employers and workers should be included, as provided for under article 23 of the Constitution. Second, the specific provisions in the instruments relating to the question should be included in the text of the questionnaire instead of the annex. Third, with respect to question 6, reference to consultations with social partners should be moved to a new question 6.1 (e.g. “have social partners been consulted in the adoption of these measures?”). Fourth, in question 7, the word “free” should be added as Convention No. 88 refers to free public employment services. Fifth, question 10 was too broad and should be reformulated to take into account the essence of Recommendation No. 198, i.e. the protection of workers in disguised and contractual employment relationships. Sixth, as with question 6, question 11 should also include the consultations with social partners in a separate item. In addition, the formulation of question 11 seemed ambiguous, and should be amended to include a question on whether employment policy provides that any dismissals must be for valid reasons. Concerning Part II(B), this should read “development of new standards and

revision of old standards and review of the status of instruments". The speaker agreed with the proposed timetable.

34. She considered that this was a very important debate and she wished to listen to the different interventions before hopefully arriving at a consensual outcome which took the concerns of all groups into account, without losing sight of the spirit of the Declaration. International labour standards and standard-setting were extremely important and were the rationale for the existence of the ILO. Concerning the matter of why this question was not dealt with in the ESP Committee, she felt that moving this item from the LILS Committee would dilute the importance of General Surveys, the LILS Committee as well as standard-setting action of the ILO. She also called for more resources to be allocated to NORMES and the CEACR in order to ensure effective application of the measures taken.
35. The Employer Vice-Chairperson highlighted that according to the follow-up to the 2008 Declaration, some adjustment of article 19 reporting would be required to contribute to the preparation of the recurrent discussions. He recalled that during the tripartite consultations, two main concerns had been expressed: first, there should be no increase of the reporting workload for governments; and second, there should be no over-simplification of the report forms in order to maintain the gathering of useful information in accordance with the objective of article 19 of the Constitution.
36. Regarding the first concern, he noted that the original purpose of article 19 reports and General Surveys was to facilitate an in-depth examination of the law and practice in ILO member States with regard to one or a small group of instruments on a particular topic, including an examination of obstacles to ratification and application and possible revision needs. For such an examination to be meaningful, detailed information on all provisions of the instruments was required, which the report form, as proposed in the document, did not seem to request.
37. As for the second concern, he stressed that under the current proposal, governments had to report on between nine and 21 instruments. Although the table format of the questionnaire attempted to facilitate replies, there were still numerous questions to be replied to. Moreover, it was neither possible nor desirable for governments to respond to the questions without making themselves familiar with the content and purpose of the instruments.
38. As an alternative, he proposed that the questionnaire continue to deal with one or a few selected ILO standards on a particular topic, for instance Convention No. 181 and Recommendation No. 188 on private employment agencies or Recommendations Nos 189 and 193 on small and medium-sized enterprises and cooperatives. With respect to the aligning of the topics of the recurrent items and the General Surveys, the speaker requested the Office to prepare a classification of ILO standards under the four ILO strategic objectives. Such classification would have to be flexible, as certain standards contain elements which were related to several strategic objectives. The Office could simplify and streamline article 19 report forms and the presentation of the report form in a table format was considered useful in this respect. However, he underlined that article 19 report forms and General Surveys were not the only source of information for the recurrent items. Many other useful sources of information could be used, such as article 22 and 35 reports, reports from the field, publicly available national legal information, as well as ILO research, technical cooperation activities and other UN publications. For those reasons, the Employers' group did not agree on the proposed report form and made a few suggestions to modify it. First, Part I should be limited to a few crucial areas and Part II(A) should become part of Part I. In the present climate, governments had to concentrate on improving the national economic situation and did not need to be overburdened with long, complicated questionnaires.

39. Turning to the point for decision in paragraph 16(ii)(a), the Employers' group agreed to the postponement of the request for article 19 reports on the four instruments. However, the speaker asked the Office to clarify what would happen to the report forms of the postponed instruments.
40. The representative of the Government of Germany, speaking on behalf of IMEC, noted that the 2008 Declaration introduced a scheme of recurrent discussions in the ILC to review trends relating to each strategic objective, including through standards-related measures. IMEC welcomed this new approach and thanked the Office for the overview it had provided on the implication this could have on General Surveys and article 19 reporting. The recurrent discussions under the 2008 Declaration were not intended to be supervisory in nature nor duplicate the work of any supervisory body. While it was anticipated that the review of trends and developments in the recurrent discussions should use the information on law and practice contained in a new type of General Survey, these should not be the only source of information as recurrent discussions would have a much broader scope.
41. IMEC supported postponing the request for article 19 reports on labour relations in the public service and requesting, instead, reports on employment instruments for 2009. The group also supported the proposed timetable and transitional arrangements for the first General Survey and recurrent discussion in 2010. IMEC appreciated the Office's efforts to make the new article 19 questionnaire design clear, concise, easy to understand and user-friendly and noted that this design represented an experimental approach, and that further improvements would need to be based on this experience. The views of the CEACR would be very useful in this regard.
42. The speaker recalled that the 2008 Declaration specified that the adaptation of the existing modalities of application of article 19 should not increase the reporting burden of member States. The group appreciated the Office's ambitions to limit the number of questions, but the impact on the reporting burden was still unclear. Furthermore, General Surveys were, and should continue to be, the essential tool for the ILO in making a comprehensive assessment of the impact and the usefulness of international labour standards. Therefore, in the interest of both limiting the reporting burden and ensuring high-quality information, article 19 questionnaires should be limited to the instruments that were the most relevant. Also, the questions themselves should be simplified where appropriate.
43. Given the importance of the decision before the LILS Committee, IMEC regretted that the constituents did not have enough time to fully consider the implications of the proposed questionnaire on employment. Consequently, the group had been unable to reach a consensus view on this particular questionnaire. The group agreed, however, that the way forward in redesigning the questionnaire would require careful and full consideration by the Governing Body – both in terms of its possibilities and its implications. IMEC therefore requested the Office to ensure that the necessary documentation for the next round of discussions on the article 19 questionnaire design should be available no later than one month before the March 2009 Governing Body.
44. The representative of the Government of France, speaking on behalf of the governments of the European Union (EU), supported the statement made by IMEC. The EU was open to a new approach in the formulation of the article 19 questionnaire in light of the implementation of the 2008 Declaration, and appreciated the Office's proposal in this regard. However, the governments were not ready to endorse the new format of the questionnaire proposed by the Office, as they had not had enough time to analyse the consequences and impact on the quality of the General Survey and on the workload of the governments, the Office and the CEACR.

45. The EU was deeply concerned that the character and relevance of the General Survey could change, as this approach would preclude the type of in-depth review that had been the hallmark of General Surveys on specifically targeted topics. For example, in November 2006, the Governing Body decided to request article 19 reports on instruments concerning labour relations in the public service. Now the subject would apparently be subsumed into a broad General Survey concerning all instruments relating to social dialogue. This might lead to a more superficial discussion of General Surveys in the Committee on the Application of Standards which was not in the ILO's interest. In addition, the new proposed format might place a significant burden on member States, despite the Office's efforts to limit the number of questions, as the questionnaire was to cover between nine and 21 instruments. In this connection, the EU proposed to limit the number of instruments covered to a minimum and suggested that the CEACR use other sources of information already available, as indicated in the Steering Group. In addition, the questions themselves should be re-examined and pared down where possible. It would also be useful to have the view of the CEACR concerning the impact of this questionnaire on its workload and working methods.
46. The EU welcomed the Office's proposal for a cyclical update-based approach, which might ease the burden of the governments. Further clarification from the Office was requested in this regard. There seemed to be a basic inconsistency between the objectives of the recurrent discussion, which aimed at a global review of activities, and the practical necessity and advantages in limiting the number of instruments covered under the General Survey. While the EU was open to a new approach concerning article 19 questionnaires, at this stage they were not ready to endorse the proposed questionnaire. It proposed to amend subparagraph (c) of the point for decision, as follows: "(c) to request the governments to submit for 2009 reports under the existing format of the article 19 questionnaire, as used for the 2004 General Survey". In addition, a new subparagraph should be added reading as follows: "(d) to ask the Office for a new proposal early in advance for the March 2009 Governing Body concerning the new questionnaire on instruments related to the next recurrent discussion on social protection in light of the Committee's conclusions." Finally, the EU requested the Office to ensure that more in-depth discussions with all the constituents be held in due time before the next session of the Governing Body.
47. The representative of the Government of Nigeria, speaking on behalf of the Africa group, underlined that member States' reports under article 19 assisted the ILO in identifying some of the causes of non-ratification of specific Conventions and areas where technical assistance was needed. In paragraph 2 of the document, the positive effects of General Surveys on the review of all the principal Conventions and Recommendations were highlighted. In light of the 2008 Declaration, this Committee had to consider the proposal of a General Survey concerning employment instruments. The 2008 Declaration mandated the introduction of a scheme of recurrent discussions to review the trends relating to each strategic objective in order to strengthen the link between needs of Members and action taken by the Organization. The Africa group stressed that the ILO field offices played a vital role in this. In paragraph 5, it was noted that the follow-up to the 2008 Declaration stressed that the recurrent reports should not duplicate the ILO's existing supervisory mechanisms. A six-year cycle option for the recurrent discussions had been proposed. Previous discussions on the adjustment of the reporting cycle should be borne in mind as the aims of both were to meet the needs of the constituents and to make the ILO more effective. The simplification and improvement of the article 19 questionnaire had been a source of concern over the years. The Africa group was of the opinion that the questionnaire was simple and would not impose a further burden on member States. The speaker supported the point for decision in the document.
48. The representative of the Government of the United States, supporting the statement made by IMEC, expressed her concern that the present draft questionnaire might significantly

increase the reporting burden on member States. A questionnaire covering diverse instruments could have a negative impact on the character and quality of the General Survey, reducing it to a source of information for the recurrent discussions envisaged under the 2008 Declaration. She noted that the follow-up to the 2008 Declaration did not require the use of article 19 reporting, but suggested that the follow-up measures might entail some adaptation in the application of article 19(5)(e) and (6)(d) without increasing the reporting obligations. While recognizing the value of redesigning the article 19 questionnaire, the current draft required more work. The decision on the draft questionnaire, however, could not be postponed. A reasonable compromise at this transitional and experimental juncture would have been to limit the article 19 report on employment to an update of the 2004 General Survey and to begin drafting, for the next cycle of the recurrent discussion, a questionnaire which satisfied all needs and expectations.

- 49.** The representative of the Government of Pakistan emphasized that General Surveys were an invaluable source of objective information and provided useful points of reference for the judiciary and social partners at the national level. It was good to note that it would be possible to complete the proposed General Survey online and that the constituents could simply update the information in the future. However, he was concerned that member States may have to report on more than 21 instruments related to employment, which would increase their reporting burden as noted by the Government representative of Lebanon. It would be difficult for governments to comply with these obligations, even with the support and assistance of the field offices. Regarding the format of the proposed questionnaire, certain instruments listed under option three, in particular Convention No. 169, did not seem to be directly concerned with any of the strategic objectives, even though it did have provisions on the employment of indigenous and tribal people. The Governing Body should try to decrease the number of instruments to be reported upon and he asked whether the questionnaire would be mandatory or voluntary. He also agreed that the Office should analyse whether a discussion of the questionnaire would be better suited in the framework of the ESP Committee rather than LILS. He supported the points of decision contained in paragraph 16 of the document, while mentioning that the third group of instruments should not be included in the proposed General Survey on employment.
- 50.** The representative of the Government of Australia, supporting the IMEC statement, and following a discussion held with the representative of the Government of Switzerland, welcomed the Office's effort to produce a new approach bringing article 19 reporting in line with the 2008 Declaration. This seemed to contribute to emphasizing the core rights and principles of international labour standards, and exploring opportunities to consolidate them, and enhance their impact and visibility. He emphasised that it was difficult at this point to make a decision on the questionnaire without knowing whether all matters could be addressed in the time available. If they could not be adequately addressed, then the Office should be urged to continue its work on this important innovation with a view to subsequent article 19 questionnaires. In paragraph 12 of the document, it was noted that an update-based approach might be used for the questionnaire. He considered this as a highly positive proposal and wished for more details on how this would be part of the new approach. This approach might be effective in offsetting some concerns member States had on the reporting burden as, based on experience in the context of annual reports under the Declaration on Fundamental Principles and Rights at Work, while the first report required a large amount of work, following reports were simply a matter of updating the information already provided.
- 51.** The representative of the Government of Kenya supported the statement of the Africa group. He acknowledged the responsibility of member States as regards reporting obligations and was open to any new initiatives and approaches that would further improve the system. To achieve the objectives laid down in the Declaration, serious consideration

needed to be given to the new approach concerning article 19 questionnaires. The Office needed to consider how to ensure that discussions reviewing the trends relating to each of the strategic objectives could be achieved. In this context, the proposal in paragraph 5 of the document was appreciated. Synergising General Survey topics with the recurrent discussions cycle was useful. Employment in all its facets was a global concern and he strongly agreed with the view provided in paragraph 7 of the document. No system or process was cast in stone. The tripartite consultations held in September were in the right direction. In order for member States to better meet their reporting obligations, in light of the adoption of the 2008 Declaration, a new innovative approach in terms of format, type of questions and choice of instruments was necessary. New developments necessarily implied a transitional period, thus the new timetable and variations were acceptable, in particular in the light that the Office would make every effort to assist member States in understanding the proposed changes. He supported the point for decision.

52. In light of the comments made by the other groups and governments and with the objective of achieving a consensus, the Worker Vice-Chairperson made several suggestions to modify the format of the questionnaire. First, as this was an experimental approach to article 19 questionnaires, at the end of one year the format should undergo a review to assess whether it was effective or not, leading to its continuation, modification or a return to the status quo. Secondly, the questionnaire should focus on a smaller number of instruments (i.e. four Conventions and five Recommendations) as was provided for in option one of the questionnaire. There had been an agreement in the Steering Group that the subject of employment should be covered twice in the cycle so those instruments not covered in the present questionnaire should be covered in the second examination of the topic. As many of the questions were related to Convention No. 122, the large number of countries that had already ratified this instrument would not need to provide information for questions relating to this instrument, thus reducing their reporting burden. Finally, Part II should become Part I and vice versa. The new Part I would be obligatory while Part II could be completed on a voluntary basis. This would take into account the employers' and governments' concerns that there were too many instruments to report on. In addition, fewer instruments would allow the General Survey to focus on certain areas and provide in-depth coverage of the situation.
53. The Employer Vice-Chairperson felt it was important to clarify the Employers' group's position on the new proposal, in particular for the benefit of the governments. The speaker agreed that there was some scope for agreement, in particular with respect to: looking at the package of instruments to be addressed; inverting Parts I and II, with their respective obligatory and voluntary natures; and by modifying the wording in the questionnaire. However, this would be on the condition that this was to be a trial for one year, at the end of which the method would be evaluated. However, any decision needed to be consensual and he wished to hear the views of the governments before making a decision. If the Committee waited until March to make a decision, they would not have enough time to make changes and adjust.
54. The representative of the Government of Lebanon supported a questionnaire on employment for a recurrent discussion in 2010. However, despite the concise table format, detailed information on instruments still needed to be provided. If the questionnaire was to cover 21 instruments, this would increase the reporting burden of member States. The number of instruments examined should be cut down to the essential ones and other instruments should then be addressed in the second reporting cycle on employment. This questionnaire should be tried on an experimental basis. Furthermore, the position of the CEACR on this exercise was unclear and the impact on their workload would need to be assessed. The modalities of how the Office could assist member States also needed to be evaluated. Finally she stressed that this exercise should not add to the reporting burden of member States.



55. The representative of the Government of India indicated his support for any simplified format of article 19 questionnaires and agreed with all items contained in the point for decision in paragraph 16.
56. The representative of the Government of the Republic of Korea, supporting the statement made by IMEC, stated that while the form and the language of the proposed questionnaire appeared simple, the details on policies, other measures and institutions to be provided would require substantive work. It remained unclear whether the member States that had ratified some of the Conventions covered still had to answer the questions, as most were linked to several instruments. She requested the Office to provide guidance on the specific type of information requested. The rearrangement or merger of the questions could also be considered as could reduction of the number of instruments to the most representative ones. As the new questionnaire was proposed on an experimental basis, sufficient time and effort needed to be given in order to develop and improve it. Furthermore, the merger of reporting obligations under the Global Report for the Declaration on Fundamental Principles and Rights at Work and the General Survey had to be considered. It was still vague how the ILO field offices could assist member States in discharging their reporting obligations and the Office's capacity and resources had to be allocated for this purpose. Finally, she stressed that the implementation plan for the new 2008 Declaration needed to be tangible, feasible and manageable, and that its outcome had to be meaningful, fruitful and useful, for member States as well the ILO.
57. The representative of the Government of Canada, supporting the statement made by IMEC and the concerns expressed by the representative of the United States and the EU, drew attention to the points which had emerged from the discussion: the desire to retain the character and quality of the General Survey; the value of aligning the General Survey with the recurrent discussion under the 2008 Declaration, while recognizing that the Survey was not the only source of information; and the potential value of redesigning the article 19 questionnaire format in order to support both the General Survey and the 2008 Declaration follow-up without increasing the reporting burden for governments, the CEACR or the Office. While her Government very much appreciated the efforts of the Office, the Workers, the Employers and the Governments for their various relevant proposals, it became evident that the redesign of a questionnaire required full analysis. There was insufficient time at this session to develop a questionnaire that adequately addressed all the issues and concerns raised. For that reason, her Government supported the United States' proposal to limit the article 19 report on employment to an update of the 2004 General Survey and to begin work on designing a revised questionnaire, through tripartite consultations, for the next recurrent discussion on social protection. She therefore supported the revised decision point proposed by the EU.
58. The representative of the Government of France requested the Office to indicate when the assessment of the questionnaire would be carried out, given that the Office would be presenting a new questionnaire in November 2009 for the second recurrent discussion.
59. The representative of the Government of Uruguay, speaking on behalf of GRULAC, stated that the General Surveys of the CEACR were extremely useful, but that the report forms under article 19 of the ILO Constitution should be adapted in line with the aims of the recurrent discussion that would take place at the Conference. He considered that the subject of employment was highly appropriate as the first topic for the discussion. The proposed questionnaire was well designed, but was not that simple to use, and required a laborious search for information. The question regarding the need to revise standards could be removed and included in a future revised version of the form, given the experimental nature of the first recurrent discussion. The topic chosen for that discussion should be in line with the article 22 reporting cycle, in order to streamline the work of governments and provide more complete information for examination. The deadlines for submission of that

information should therefore be as generous as possible. That being so, the point for decision could be approved.

- 60.** The representative of the Director-General spelled out the content of the proposal placed before the Committee by the Workers' group and which would entail the following changes to the proposal set out in the Office's paper: (i) the new questionnaire would now have three parts; Parts I and II of the Office's proposal would be inverted and a new Part III would be added to include the traditional questions on the communication to social partners of article 19 reports; (ii) new Part I would be obligatory and new Part II voluntary; however, Part I would be obligatory only for member States to the extent that they had not ratified the relevant Conventions and for all member States in respect of the effect given to Recommendations covered; (iii) new Part I(A) would be reformulated to make the distinction between the obstacles to ratification and the effect given to non-ratified Conventions and Recommendations; (iv) a reference to all relevant provisions of the instruments covered would be included in the questionnaire itself and not in the annex; (v) as for the group instruments, these would include the first group in the Office paper, i.e. Conventions Nos 88, 122, 142 and 181 as well as Recommendations Nos 122, 169, 189, 195 and 193. It was to be clarified whether or not, under the new proposal, Recommendations Nos 83 and 188 (which related to Conventions Nos 88 and 181) should be included in this group as they had not been included in the original proposal; and (vi) some of the questions currently in the text would be deleted as these related to other instruments than the instruments just mentioned. She recalled that a large number of countries had already ratified the Conventions in this group.<sup>4</sup>
- 61.** The Employer Vice-Chairperson replied that as long as it was understood that this could be reviewed, he was flexible concerning the number of instruments to be covered.
- 62.** The Worker Vice-Chairperson asked the Governments and Employers to consider including the two Recommendations that related to Conventions Nos 88 and 181 for completeness.
- 63.** The representative of the Government of Austria questioned the benefit of including an optional part in the questionnaire as governments may be inclined not to respond to this part.
- 64.** The representative of the Government of Germany requested clarification on the procedure as she understood that if the meeting of the Governing Body in March 2009 would discuss a new questionnaire there would not be enough time to undertake an evaluation of the current questionnaire.
- 65.** The representative of the Director-General replied that with respect to the preparation for the recurrent discussion in 2011 and the next article 19 questionnaire, the Office would organize preliminary consultations in January or February 2009. By that time, governments would have received the questionnaire on employment and would be able to discuss its format as well as the proposed format for the next questionnaire to be sent out in 2009. She recalled that the current timeline for drafting and sending out the questionnaire was exceptional due to the implications of the 2008 Declaration and the decision of the Conference to hold the first recurrent discussion in 2010. In general, article 19 questionnaires were sent out in the month of September of the year preceding the CEACR examination of the General Survey. The next questionnaire should therefore be adopted in principle in March 2009 or at the very latest in November 2009. She hoped that most

<sup>4</sup> As of 15 November 2008, Convention No. 88 has 88 ratifications, Convention No. 122 had 98 and Convention No. 142 had 65.

governments would see the value in providing answers to the questionnaire even if the Committee was to decide that one part would be optional.

66. The representative of the Government of France, speaking on behalf of the EU, supported the proposal that the two parts of the questionnaire be inverted. The questionnaire could be limited to cover only six instruments instead of nine: four Conventions (Nos 122, 88, 142 and 181), and two Recommendations (Nos 189 and 193). Point 16(ii)(c) should include a reference to those six instruments and a point 16(ii)(d) could be added. The Office could be requested to prepare, sufficiently in advance of the March 2009 session of the Governing Body, a new questionnaire on the instruments for the next recurrent discussion in 2011, in the light of the present discussions.
67. The Worker Vice-Chairperson thanked the Governments for supporting the revised questionnaire which was a product of consensus and tripartism. She encouraged them to submit information on the questionnaire, including for those questions that were not mandatory, and show how seriously they took their reporting obligations.
68. The Employer Vice-Chairperson supported the proposed new questionnaire, however, there was still a question outstanding with respect to decision point 16(ii)(a) in terms of content and process. In addition, he wanted assurance that this new format would be reviewed.
69. The representative of the Director-General responded that the request for article 19 reports on the application of the labour relations (public service) instruments would be integrated into the General Survey on social dialogue when it takes place. She indicated that the Office would organize consultations at the beginning of 2009 for the next questionnaire. She confirmed that an evaluation of the new questionnaire for the General Survey on employment would be undertaken once that first year was complete, i.e. after the discussion in the ILC in 2010.
70. *The Committee on Legal Issues and International Labour Standards, subject to the decision of the Governing Body to place on the agenda of the 2010 Conference a recurrent item on the strategic objective of employment, recommends that the Governing Body:*
- (i) postpone the request of the article 19 reports on the application of 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), including the sending of the questionnaire, and consider it later, in the context of a relevant recurrent item (for example on social dialogue);*
  - (ii) request governments to submit reports under article 19 of the Constitution concerning employment instruments for 2009;*
  - (iii) approve the report form concerning employment instruments, as revised by the Committee (referred to in Appendix I), concerning the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) and the Promotion of Cooperatives Recommendation, 2002 (No. 193);*

- (iv) invite the Office to prepare a new proposal early in advance for the March 2009 Governing Body concerning the new questionnaire on instruments related to the next recurrent discussion in 2011 on social protection, subject to Governing Body approval, in light of the discussion in the Committee and to make arrangements for tripartite consultations on this questionnaire.*

#### **IV. Improvements in the standards-related activities of the ILO**

(Fourth item on the agenda)

##### **(a) Possible implications of the Declaration on Social Justice for a Fair Globalization on the standards strategy and update on the implementation of the interim plan of action**

71. The Committee had before it a document<sup>5</sup> on possible implications of the 2008 Declaration on Social Justice for a Fair Globalization (the 2008 Declaration) on the standards strategy as well as an update on the implementation of the interim plan of action concerning this strategy.
72. The Employer Vice-Chairperson recalled that his group agreed to the tripartite consultations on the status of Convention No. 158 and Recommendation No. 166 as a flexible and less formal way of identifying consensus on these difficult and long-standing issues. However, any decision could only be taken by the Governing Body and proposals for concrete decisions should be included on the agenda of this Committee's next session. Concerning Part I, he wondered whether the recurrent discussions by the Conference in the framework of the 2008 Declaration follow-up could and should identify gaps in both the effect given to standards and standard setting, including revision of standards. He considered that both elements required in-depth technical examinations and this was unlikely to occur during the recurrent discussion which addressed all means of action relating to the strategic objective under review. It would therefore be more appropriate to have technical discussions on these issues in the Governing Body and its Committees, the decisions of which could in turn be taken into account by the Conference in its recurrent discussions.
73. Furthermore, he expressed support for the launch of a campaign for the ratification and effective implementation of the four priority Conventions, in line with the importance given to these instruments by the 2008 Declaration. Nevertheless, such a campaign should place a clear emphasis on the application of these Conventions. In this respect, he proposed that member States be encouraged to start by assessing their law and practice with regard to the requirements of the instruments, including their ability to take any necessary measures to comply with them. Ratification would only be desirable if compliance could be realistically ensured and for this purpose, the Office should provide assistance and make action plans for progressive implementation.
74. Regarding the reference in the document to the "modalities for updating the list of governance instruments" that could take place in the context of consultations on standards policy in paragraph 11, the speaker sought clarification as to its meaning. Concerning the proposal to review the present grouping of instruments and to synchronize articles 19 and 22 reporting for alignment with the recurrent discussions under the 2008 Declaration, he

<sup>5</sup> GB.303/LILS/4/1.

recalled that the 2008 Declaration only addressed article 19 reporting. He asked the Office to clarify the meaning of such synchronization and what it proposed in this respect. Any proposal on synchronization of article 22 reporting should not move away from its primary purpose of facilitating standards supervision by the ILO towards serving as a source of information for the recurrent discussions. Turning to the possible improvements of the report forms, he appreciated the ongoing consideration of the CEACR of the matter at its upcoming meeting and wondered whether a progress report on this subject could be submitted for March instead of November 2009.

75. Concerning Part II of the document, he recalled that the first component of the standards strategy should be defined as standards policy, instead of simply promotion of up to date standards. Referring to paragraph 20 of the document concerning the consensus on promoting all up to date standards on a priority basis, he was not aware of such a consensus or a decision to that effect. Although the Employers' group did ask the Office, together with the Workers' group, to append a list of all up to date standards to the Committee's report, only an agreement was reached on strengthened promotion for recent and priority Conventions.
76. Regarding the promotion of the labour protection instruments, the speaker highlighted the importance of the provision of practical assistance in the field of labour inspection, the sharing of good and innovative practices in member States and the need to address the problem of the informal economy in this context. Experience on labour inspection should be systematically fed into the labour regulation process to enhance application. The Employers' group regretted the excessive emphasis on ratification in the section on the promotion of Conventions Nos 122 and 144, and called for more emphasis on the actual application of the respective Conventions. However, the speaker stressed the usefulness of the study carried out in Rwanda on the obstacles to ratification of Convention No. 144 and urged the ILO to proceed in this way with other cases. The speaker welcomed the promotional activities on the four most recent ILO Conventions, which focused not only on ratification but also on the capacity to implement. In particular, he highlighted the approach used for the promotion of Convention No. 187 based on diagnosis and a resulting action programme and suggested that this approach should be used systematically for other Conventions.
77. In the context of promotion of ILO Conventions by the Office, he also wished to make some remarks with respect to a note on Convention No. 94 submitted by the Office to the "Forum on Workers' Rights and Economic Freedoms" organized by the European Commission in Brussels (8-9 October 2008). The Employers' group objected to the contents of the note as that Convention could no longer be considered as up to date. The note did not provide any indications of the views on this Convention expressed by the Employers and many Governments during the discussion of the General Survey at the Conference in June 2008. The speaker dissociated the Employers' group from the questions raised in the note regarding the compatibility of a series of recent judgements on public procurement of the European Court of Justice with ILO Conventions Nos 87 and 98. Regarding the procedure, he felt that in the future the Office should consult on such matters in house, in particular with ACT/EMP and ACTRAV. To clarify and rectify the matter, he called on the Office to communicate the views of the tripartite constituents on this matter to the European Commission and to include the re-examination of the status of Convention No. 94 on the agenda of the March 2009 LILS Committee.
78. Concerning enhancing the impact of the standards system through technical cooperation, he firstly expressed his disappointment that ACTRAV and ACT/EMP were not involved in the preparation of the good practice guide to improve the impact of international labour standards through technical cooperation. Referring to standards-related priorities in Decent Work Country Programmes (DWCPs), NORMES should not impose its standards

priorities on countries, but make proposals which are to be considered by constituents and not criticize DWCPs if such proposals have not been retained. The Employers' group was strongly opposed to any conditionality of ILO technical cooperation by means of mainstreaming standards into DWCPs. On the issue of mainstreaming standards into the work of the United Nations Development Group, the speaker also underlined the importance of respecting the views and priorities of constituents and argued that there should also be no imposition of standards via other UN agencies.

79. Finally, with regard to the fourth component of the strategy on visibility, he reiterated the request for the involvement of ACTRAV and ACT/EMP in the preparation of new publications, tools and training referred to in the document, in particular those aimed at the broader public. With the preceding qualifications and reservations, he supported the points for decision.
80. The Worker Vice-Chairperson noted that the adoption of the 2008 Declaration was an important milestone for the ILO. It recognizes the ILO's special role as a standard-setting Organization. The Preamble strongly recognises that the Organization must promote the ILO's standard-setting policy as a cornerstone of ILO activities and ensure the role of standards as a means of achieving its constitutional objectives. The Declaration also provides for the establishment of a scheme of recurrent discussions "without duplicating the ILO's supervisory mechanisms". This was the key role of the ILO and the fundamental role of the supervisory system. The Declaration further upholds that international labour standards were the basis of the four strategic objectives and she urged member States to "make the fullest possible use of all the means of action provided under the Constitution of the ILO to fulfil its mandate". The General Survey, based on article 19 of the Constitution and shaped by the CEACR, had the following objectives: it provides an in-depth, authoritative overview of national law and practice with respect to the ILO standards; it allows for a substantive discussion in the Committee on the Application of Standards; it provides a digest of the jurisprudence on ILO standards; and it provides authoritative guidance to governments on how to apply Conventions, and to judges as a means of interpreting Conventions. Including the article 19 General Surveys in the cyclical review process was an important step forward as the Survey was a key instrument in supporting countries in the efforts to ratify Conventions.
81. She supported the expanded use of the General Survey and hoped that the conclusions drawn from both the General Survey and the recurrent discussions would provide a basis for developing a consensus on the formulation of new or revised standards, in identifying gaps in the standards policy and helping to mainstream standards as a cross-cutting item across the whole Organization. She endorsed the campaign for a more effective ratification and implementation strategy for the priority Conventions. This should be supported by a detailed annual report to the LILS Committee on progress made with clear information from the regional offices regarding their outcomes. This campaign would reinforce the campaign for the ratification of the fundamental Conventions, which are at the heart of the 2008 Declaration, in particular freedom of association and collective bargaining, which are recognized as tools to "enable the attainment of the four strategic objectives".<sup>6</sup>
82. She supported the need to enhance the impact of the supervisory system. The increased workload of governments was due to the large amount of paperwork required by the Office but also to the failure of some governments to fully implement ratified Conventions. She again stressed the need to increase the resources of NORMES so that they could effectively do their work and better assist the governments with their reporting obligations by making their reporting duties clear, providing information and avoiding asking

<sup>6</sup> 2008 Declaration, Part I(A)(iv), para. 1.

questions that could be answered by looking at national legal databases. A simplified reporting system should produce better outcomes in the sense that more substantive and comprehensive information would be provided. She fully supported any contribution of the CEACR, on an ad hoc basis, to make report forms easier to use and ensure that they contain the relevant questions to help the Experts do their job better.

- 83.** With respect to Part II, she welcomed the EU call to its Member States to ratify all the up to date Conventions and hoped that other governments would follow this example. She congratulated all governments that had ratified the priority Conventions and urged other member States to do so. Concerning labour inspection, she requested the Office to clarify whether the strategy was limited to the ratification of Conventions Nos 81 and 129. She supported the comments of the CEACR to ensure the effective cooperation between labour inspection services and judicial bodies. Concerning employment and tripartite consultation, given the importance of Conventions Nos 122 and 144, it would be good to have a separate update for each of these Conventions. These standards were even more crucial now in the wake of the global financial meltdown and its spillover into the workplace. With respect to the promotion of the four most recent Conventions, she congratulated all governments that were actively moving forward with the ratification of these instruments. Concerning occupational safety and health, she was disappointed that there were only seven ratifications of Convention No. 187 given its importance and requested governments to attach greater importance to this instrument as well as Convention No. 155. She thanked the Office for the clear strategy set out in paragraph 48 and noted the activities undertaken. In executing the strategy, the Office's focus should be on building a culture of prevention in health and safety at work and effective enforcement of legal provisions.
- 84.** Concerning enhancing the impact of standards through technical cooperation, the Workers' group truly regretted the findings of the independent evaluation, which showed that standards were not frequently featured in DWCPs and that cooperation between NORMES and other ILO departments was almost non-existent. Standards should be at the heart of ILO work and integrated into all DWCPs, and NORMES should actively work with all ILO technical departments and field offices; the latter should proactively seek the assistance of NORMES and include ratification of ILO standards in their current programme of work. The speaker welcomed the country profiles and hoped that this would be a tool to better integrate standards in DWCPs. These profiles should, however, also contain information from and positions taken by the supervisory bodies including the Committee on Application of Standards. This information and these positions of the supervisory bodies should be addressed as a matter of priority in DWCPs. The Office should also enhance its monitoring of DWCPs and report to the Governing Body regularly on the extent to which standards are integrated into these.
- 85.** With respect to enhanced access to and broader visibility of the standards system, she supported the efforts to keep the various databases up to date. Strengthening the capacities of the constituents was vital in ensuring the effective and responsible use of the supervisory system. This was the reason why the Workers' group had requested that the information provided in March on the supervisory system be provided for in a manual for constituents. This could also be accompanied by a user-friendly manual on how best to use the system, which would contribute to a more efficient and effective use of the supervisory system.
- 86.** She recalled that in section II(B)(iii) of the 2008 Declaration, member States were called on to consider a "review of their situation as regards the ratification or implementation of ILO instruments with a view to achieving a progressively increasing coverage of each of the strategic objectives". Ratification was only a starting point towards application and not an end in itself. Countries were free to decide whether or not they wanted to ratify, however, by agreeing to be a Member of the ILO, governments also implicitly adopted the

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core values of the Organization, including ratification of Conventions and their implementation. Finally, she supported the statement made by the Employer Vice-Chairperson concerning the better integration of ACT/EMP and ACTRAV into the work of the Office. She agreed with the point for decision.

87. A representative of the Worker members (Mr. Edström) recalled that the work done on standards policy during the past 12 years on the review of standards and standards policy had been accomplished in good faith resulting in the current standards strategy, which contained four elements. Given that this was a new Governing Body, he reminded the Committee that they could not start everything from the beginning and hoped that all members would respect the work already done.
88. The representative of the Government of Germany, speaking on behalf of IMEC, stated that the 2008 Declaration would have an effect on the interim plan of action in relation to the standards policy as well as on the streamlining of reporting under articles 19 and 22 of the ILO Constitution, including the reporting for General Surveys. The conclusions which may be drawn during recurrent discussions, possibly linked to a General Survey, could lead to a comprehensive analysis of the relevant standards covered by the recurrent item. The 2008 Declaration placed special emphasis not only on the core labour standards, but also on those regarded as most significant from the point of view of governance, in particular those covering tripartism, employment policy and labour inspection. As the interim plan of action, approved by the Governing Body in November 2007, included strengthening the promotion of the four priority Conventions, a campaign for the ratification and effective implementation of these Conventions should be launched.
89. The speaker stressed that the 2008 Declaration highlighted the need to review institutional practices in order to enhance the impact of the standards system. According to the proposed scheme of recurrent discussions, the Office proposed the synchronization of reporting under both articles 19 and 22, in the same thematic area. Despite the progress that needed to be made with respect to the article 19 questionnaire on employment, IMEC supported the point for decision in paragraph 19.
90. Concerning Part II on the update on the interim plan of action, IMEC welcomed the progress made in some areas since March 2008, in particular the progress made in the five-year Action Plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006. IMEC welcomed the numerous regional and national tripartite conferences and meetings that have been convened.
91. With respect to technical cooperation, IMEC highlighted the emphasis of the 2008 Declaration on enhancing the ILO's capacity to assist member States and appreciated the move towards a rights-based approach, decentralization, country programming and national ownership of the standards strategy in DWCPs. Progress had been made on mainstreaming standards-related priorities in DWCPs, inter alia, through the ILO's contribution to the work of the United Nations Development Group, which was mandated to improve effectiveness of the UN at country level.
92. Regarding the development of an online reporting system, IMEC asked the Office for clarification on the requirements of technological investments and the financial resources needed for the installation of a comprehensive online reporting system. Finally, in light of the comments made, IMEC supported the continuation of the implementation of the interim plan of action.
93. The representative of the Government of Uruguay, speaking on behalf of GRULAC, said that the mechanism for promoting the priority Conventions provided for under the 2008 Declaration should be established by the LILS Committee and that it should include a



series of activities in the field, for which the regional offices should be provided with sufficient guidance. The group believed that the promotion of the fundamental Conventions should be strengthened at the institutional level through the DWCPs. The Declaration provided that the member States could consider the review of their situation with regard to the ratification and application of ILO instruments with a view to achieving coverage of the strategic objectives, with emphasis on the core labour standards and the priority Conventions dealing with tripartism, employment policy and labour inspection. The streamlining processes for the submission and examination of reports under articles 19 and 22 should be subject to consultations with a view to reviewing the reporting cycle. In that regard, the group expressed its support for an integrated approach in the submission of article 19 reports and the updating of article 22 report forms. Furthermore, for certain topics, in view of the large number of Conventions, a longer cycle for the submission of reports should be allowed. With regard to Part II of the document, the group expressed its support for the efforts to promote the recently adopted instruments.

- 94.** The representative of the Government of Cuba endorsed the approach laid down in paragraph 11 on the governance instruments. While efforts had been made since the 1998 Declaration towards the ratification and application of the fundamental Conventions, this had not been done in the case of the priority Conventions on labour inspection and employment policy. The review of the article 22 reporting cycle should be carried out at the same time as that of the cycle for the submission of article 19 reports on the same theme, and the cycle of recurrent discussions on the subjects adopted under the 2008 Declaration. Improvements to the article 19 and article 22 report forms were needed to make them more consistent, up to date and simple. An online reporting system could be useful, while the traditional system should be maintained for countries that did not have the necessary electronic means. Since the recurrent discussion system was experimental, it would be necessary to make modifications and adapt approaches based on the lessons learned. She supported the point for decision in paragraph 19. She believed that promoting the priority Conventions and, in particular, activities related to labour inspection and employment policy would be conducive to respect for workers' rights. The ratification and application of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006, called for more technical assistance because of their technical requirements. Technical cooperation was very important for the effective application of standards. It required significant resources, which should be provided for in the Organization's budget. Additional resources to those ends should be included in the ordinary budget, to be used impartially and in accordance with the Organization's objectives. She supported the point for decision in paragraph 79.
- 95.** The representative of the Government of Egypt, emphasizing the importance of the application of standards for achieving the Organization's strategic objectives, drew attention to the need to focus efforts on realizing those objectives without adding to the workload of member States. More technical assistance should be provided to help member States meet their obligations. Furthermore, the Organization should translate more official documents into other languages, particularly Arabic, because some countries had difficulties studying them and responding to them.
- 96.** The representative of the Government of India stated that member States should be free to decide if and when they would apply and ratify ILO Conventions taking into account social and economic development. The ILO should consolidate the existing standards and modify instruments that were no longer up to date. Priority should be given to the revision of standards, rather than establishing new standards. He welcomed the proposal for the identification, updating and promotion of the list of standards which were most significant from the viewpoint of governance including the four priority Conventions, of which India had ratified Conventions Nos 81, 122 and 144. Labour inspection played a key role in promoting decent work and in implementing labour standards at the workplace, however,

given that in India most agricultural work was in small and marginal farms, that many agricultural labourers were landless, and that there was no comprehensive legislation covering all aspects and segments of agricultural workers, his country did not feel that it was possible to ratify Convention No. 129 at present. The proposals for streamlining the sending and processing of information and reports under articles 19 and 22 as well as for an evaluation of the grouping of Conventions for reporting purposes were welcomed. An all encompassing review of reporting obligations under articles 19 and 22 along with the annual review under the Declaration of Fundamental Principles and Rights at Work would be beneficial, with a view to reducing the workload across the board. While conducting such reviews, the views of constituents should be taken into consideration. Advocacy, training and technical cooperation were acceptable forms and tools of action for promotion of international labour standards, however ratification was not an end in itself, and had to be accompanied by specific and clear-cut measures for its implementation. He supported the points for decision contained in paragraphs 19 and 79 of the document.

97. The Worker Vice-Chairperson supported the suggestion made by the representative of the Government of Egypt concerning the provision of documents in Arabic and requested the Office to follow up on this suggestion.

98. The Employer Vice-Chairperson, in response to the Workers, indicated that the Employers' group did not want to go back over the work that was already done and reaffirmed that they were here in good faith and wanted to go forward.

99. *The Committee on Legal Issues and International Labour Standards, taking note of the Office paper and the comments made during the discussion, recommends that the Governing Body invite the Office to:*

(i) *launch a promotional campaign for the ratification and effective implementation of standards that are the most significant from the viewpoint of governance (the four priority Conventions: Conventions Nos 81, 122, 129 and 144), and submit a report annually to the LILS Committee on the progress achieved together with the report on the fundamental Conventions;*

(ii) *prepare an evaluation of the grouping of Conventions by subject for reporting purposes that was introduced in 2003, and proposals for new options for a global approach to streamlining reports, taking into account the decisions taken at its current session and the March 2009 session relating to the follow-up to the 2008 Declaration, to be submitted at the 306th Session of the Governing Body (November 2009), and present a progress report on this matter at its 304th Session (March 2009);*

(iii) *report on the consultations concerning Convention No. 158 and Recommendation No. 166 at its next session and provide for the continuation of consultations on this matter, if necessary;*

(iv) *make arrangements with a view to holding consultations on standards policy not later than March 2009;*

(v) *submit a progress report on the review of the article 22 report forms at its 306th Session (November 2009);*

(vi) *invite the Office to continue to implement the interim plan of action approved at its 300th Session (November 2007), in the light of the LILS*

*Committee's discussions and the consultations on the matter, and to report on the next steps taken for its implementation, as regards the four components of the standards strategy, at the 304th Session of the Governing Body (March 2009).*

**(b) *Improving the coherence, integration and effectiveness of the supervisory system through a better understanding of its dynamics (further study from a substantive and practical standpoint)***

- 100.** The Governing Body had before it a document <sup>7</sup> on improving the coherence, integration and effectiveness of the supervisory system through a better understanding of its dynamics, which contained a selection of case studies.
- 101.** The Worker Vice-Chairperson emphasized that this document should be discussed taking into consideration the discussion held in March 2008 on improvements in the standards-related activities of the ILO. <sup>8</sup> The paper presented by the Office on the interaction between the different procedures showed that the supervisory system was largely coherent and consistent. The different parts of the system generally complemented each other and, in particularly difficult cases, these different procedures served to develop synergies in ensuring progress in law and practice. Where similarities in the supervisory procedures did occur, these were at the level of tools, composition of bodies and procedures. No similarities existed in the purpose or mandate of each procedure.
- 102.** She took note of the different factors that influenced the interaction in the supervisory system as identified in the paper (i.e. role of the constituents, the Governing Body and the subject matter of the cases). An additional factor not taken into account was the nature and gravity of the case, which was a key consideration in the way trade unions chose the different procedures to use. With respect to the case studies provided in the appendix, there was one concerning Nepal, which covered a multiple number of complaints. It would have been preferable to select a case study covering only one complaint to ensure that a proper in-depth evaluation be done.
- 103.** She agreed with a number of the conclusions drawn in the paper, in particular with respect to: (i) paragraph 13 concerning the fact that the links formed according to the particular requirements of the issue in question, as determined by the constituents; (ii) paragraph 14 underlining that in the ILO supervisory system emphasis had been placed on the distinctive nature of each procedure and on the fact that none of them could operate as a substitute for any other; (iii) paragraph 17 recognizing that while there were some simultaneous interactions, they mostly occurred in sequence. In this respect, the Office should have added that these simultaneous interactions occurred between procedures, each dealing with a particular case within its mandate and field of competence.
- 104.** While broadly agreeing with the first part of the Office paper, the Workers' group had some reservations with the second part dealing with the impact of the interactions on the functioning of the supervisory system. The document analysed this impact using two criteria: whether the interaction added to the amount of time taken to deal with the cases; and whether these interactions occurred in a consistent and complementary manner or

<sup>7</sup> GB.303/LILS/4/2.

<sup>8</sup> GB.301/LILS/6.

whether there was duplication. In relation to the first criterion, the Workers' group agreed with a number of conclusions set out in the study while indicating that other factors were also relevant such as the nature and gravity of the case, national circumstances and the state of social dialogue as well as the will of governments to cooperate with the supervisory bodies.

- 105.** With respect to the second criterion, the speaker noted that unfortunately the document did not clearly define what factors had been considered to assess whether there was duplication in certain cases. The examples cited in paragraphs 28 and 29 did not demonstrate duplication, rather they illustrated the complementary nature and logical interplay of the supervisory system, as for example in the case dealing with Myanmar. Paragraph 31 raised yet another situation whereby the tripartite committee becomes the motor of the system, while drawing on the jurisprudence of the CEACR. Again, this was not duplication. Against this background, the Workers' group did not agree with the conclusions in paragraph 40 that there was "some element of duplication" in the interaction of the supervisory bodies; in its view, there was rather a dynamic interplay between the different bodies. In serious cases, the interplay involved different supervisory bodies which operated in synergy. The Office had a key role in ensuring complementarities between the different positions taken by the different procedures. Furthermore, the system was flexible and pragmatic and was therefore able to respond in an innovative but consistent manner to cases brought before it. Ultimately, this interplay was governed by the tripartite constituency. The speaker endorsed the point for decision.
- 106.** The Employer Vice-Chairperson felt that the Office had missed an opportunity to undertake a critical analysis of the functioning of the supervisory system and wondered what was the added value of requesting the Office to undertake such a study. The study lacked substance although certain of its parts were interesting and in particular, the case studies appended to the paper. The Employers' group had hoped for an in-depth analysis of the supervisory system that would have enabled the LILS Committee to consider concrete proposals for streamlining and strengthening supervisory procedures. The study was overly descriptive and did not give sufficient information of practical interest for constituents. The outcomes were mostly inconclusive (in particular regarding the question whether the interactions between the supervisory procedures lead to an increase or decrease of time taken or where it is suggested that duplication in the supervisory bodies' work, where it occurs, is necessary and that seemingly arbitrary use of various procedures is reflecting "the flexibility" of the system and the "pragmatic" use made of it). Judging by the conclusions, things were basically fine and there was no need for any changes/improvements in a system that dates back to the origins of the ILO. With reference to paragraph 15 and footnote 8 of the paper concerning the examination of legal issues under the article 24 procedure, it should be underlined that the scope of article 24 of the Constitution was not limited to questions of fact and that in any event, as the paper itself suggested, it was difficult to make a clear distinction between questions of fact and questions of law. Regarding the study on the interpretation of international labour Conventions, proposed for 2009 by the Office, the Employers' group considered such a study to be important; its terms of reference could be agreed upon within the framework of appropriate consultations. This study should revise the one submitted to the Governing Body in May 1993 and discussed in the Conference Committee on the Application of Standards the same year. More importantly, the study should address applicable methods for the interpretation of ILO Conventions and be practical by adopting a users' perspective. Hopefully, the study would enable the Governing Body to make decisions with a view to improving standards supervision. The speaker hoped that, to the extent possible, such a study could be submitted at the March 2009 session of the Governing Body.
- 107.** The representative of the Government of Germany, speaking on behalf of IMEC, indicated that the comprehensive study submitted by the Office demonstrated that the links between

the supervisory procedures were necessary and, for the most part, effective. While some duplication between the various procedures was inevitable, the procedures complemented one another, and there was much consistency and coherency in their conclusions and recommendations. The role of the Office was to ensure this level of consistency and coherence. The role of the tripartite constituents was clearly central. As the study indicated, it was difficult to evaluate the impact of the links on the observance of ratified Conventions because the real impact of the supervisory system could lie in the thorough examination and analysis of national labour law, policies and practices, the provision of tools to reform these and an ongoing dialogue through regular monitoring. While many cases remained unresolved or only partially resolved, the reason did not seem to lie in the supervisory system itself, but rather in national political realities. In conclusion, the study demonstrated that the overall functioning of the supervisory system was clearly positive. This confirmed the validity of IMEC's views that the ILO's supervisory machinery worked well and did not need more than minor adjustments to further enhance its transparency and effectiveness. IMEC endorsed the Office's proposal for a study on interpretation of ILO Conventions to be submitted to the Governing Body next year.

- 108.** The representative of the Government of the United Republic of Tanzania noted that, as the study suggested, the analysis of cases by different supervisory bodies and the sharing of information between them could possibly lead to duplication. This should not be considered as a negative element, rather this could enable the supervisory bodies to have a thorough opinion of actual application of international labour standards. With respect to comments made by the CEACR as to the fulfilment by member States of their reporting obligations, more account should be taken of national circumstances. With respect to the proposed study on interpretation of ILO Conventions, it appeared to have a very wide scope with multiple facets. The purpose of the study was to bring about a common understanding of human rights, labour standards, workers' rights and the Decent Work Agenda in the interest of the protection of workers and the reduction of poverty. If the study was to cover the way in which the international labour standards were interpreted in different countries, this aspect should be reflected in the wording of the proposal. Subject to this last comment, he supported the point for decision.
- 109.** The representative of the Government of Lebanon noted that, according to paragraphs 15 and 25 of the Office paper, the same issue could be raised through more than one supervisory procedure. The question thus arose as to how the coordination and exchange of information between the different supervisory bodies was organized in order to ensure consistency. She highlighted a translation problem in the terminology used in the Arabic version of articles 24 and 25 of the Constitution of the ILO on representations and requested that it be resolved.
- 110.** The representative of the Government of India stated that the interactions between supervisory bodies added to the time already taken for the examination of cases under each procedure. Furthermore, even after prolonged interactions, some cases remained unresolved. The interactions should therefore be reduced and repeated referrals of the matters to the government concerned should be avoided. With respect to cases concerning freedom of association, when receiving complaints from the social partners, the Office should first ascertain whether the issues were already being handled by mechanisms at the national level before bringing the matter before the ILO supervisory bodies. Nonetheless, the most significant conclusion to be drawn from the study was, as indicated in paragraph 40, the central role of tripartism in the functioning of the system. He expressed support for a study on the interpretation of international labour Conventions, to be submitted to the Governing Body in 2009.
- 111.** *The Committee on Legal Issues and International Labour Standards, taking note of the Office paper and the comments made during the discussion, recommends*

*that the Governing Body invite the Office to prepare a study on the interpretation of international labour Conventions in 2009.*

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

- 112.** The Committee had before it a paper<sup>9</sup> on the ratification of ILO Conventions further to the campaign launched by the Director-General in May 1995.
- 113.** A representative of the Director-General (Ms Cleopatra Doumbia-Henry) indicated that since the document had been issued Samoa had ratified Convention No. 138, making it the 128th Member to have ratified all fundamental Conventions. The Office had also received additional replies to the campaign letter sent by Director-General this year which updates the report as follows: Paragraph 19 – The Government of Bahrain stated that ratification of the outstanding fundamental Conventions (Nos 98, 100 and 138) had been postponed because the Labour Code was still pending before the National Assembly and a number of ministerial orders were not in conformity with these Conventions. Paragraph 36 – The Government of Japan reiterated that with respect to Conventions Nos 105 and 111 further examination of national laws and regulations was required. Paragraph 56 – The Government of Kuwait reiterated that Convention No. 100 was still under examination. Paragraph 57 – The Government of Lebanon indicated that the relevant government departments endeavoured to revise the draft amendments to the Labour Code. The Civil Service Council was continuing its efforts to upgrade the civil service regulations, taking into account the principles of freedom of association. Paragraph 30 – The Government of Saudi Arabia indicated that, for the moment, it did not intend to ratify Conventions Nos 87, 98 and 138. Paragraph 31 – The Government of Singapore stated that it had consulted with the Office regarding Convention No. 111 and that it continued to study its requirements. As regards Convention No. 105, the Government indicated that further consultations with the Office on specific provisions would be conducted. With regard to Convention No. 87, it was stated that freedom of association and protection of the right to organize, in line with the principles of the Convention was ensured. Paragraph 63 – The Government of Sudan indicated that the tripartite body set up with a view to revising the labour legislation had not yet reached conclusions on this matter. Paragraph 33 – The Government of Thailand stated that it was studying Conventions Nos 87 and 98 and the labour legislation, with a view to ensuring conformity. As regards Convention No. 111 further examination of the issues involved was necessary. Paragraph 42 – The Government of the United Arab Emirates reiterated that the DWCP under preparation would address the issue of labour relations, including worker–employer consultative schemes. An updated overview table on ratifications of the fundamental Conventions is contained in Appendix II.
- 114.** The Employer Vice-Chairperson emphasized the importance of not only ratification but also implementation of the fundamental Conventions by all member States. He noted that the 2008 Declaration did not oblige member States to review their situation as regards the ratification and implementation of ILO instruments. Therefore, member States may consider, among other things, making a review of their situation as regards the ratification and implementation of ILO instruments, but there is no obligation to do so under the 2008 Declaration, as the term “envisages” in paragraph 1 of the document wrongly suggests. He noted that the ratification of Conventions Nos 87 and 98 had not kept pace with the ratification of the other fundamental Conventions, with Convention No. 87 being the least ratified, and they had not been ratified by some of the largest countries of the world,

<sup>9</sup> GB.303/LILS/5.

resulting in only half of the workforce of the world being covered. The Office was asked to look into the reasons for non-ratification of Conventions Nos 87 and 98, including possible uncertainty about the obligations and related jurisprudence, and to make every effort to facilitate ratification and implementation and to remove possible obstacles.

- 115.** The Worker Vice-Chairperson noted that their call in 2005 for universal ratification of the fundamental Conventions by 2015 had been endorsed. She urged those governments identified to send in the declaration required under Convention No. 138, and for the Office to provide adequate and speedy technical advice. The Office was urged to develop a comprehensive strategy in order to be able to achieve universal ratification by 2015, including through DWCPs. She regretted that some governments had simply indicated that their situation was unchanged or no further action was envisaged. She joined the Employers' group in urging large countries in particular to ratify Conventions Nos 87 and 98, and agreed that not only ratification but also implementation was key.
- 116.** The representative of the Government of the Republic of Korea suggested that to better promote ratification, the Office should ensure that the original intention of the Conventions and general agreements were fully reflected, and that the interpretation process reflected the diversity of individual countries. She stated that her Government was making continuous efforts to respect the fundamental Conventions and to ensure their early ratification.
- 117.** Referring to paragraph 72 of the document, the representative of the Government of Argentina stated that the territory in question was an integral part of the national territory of the Republic of Argentina. The Government therefore objected to the United Kingdom pronouncing itself on the application of ILO Conventions to this territory. The Government of the United Kingdom recalled its position regarding sovereignty over the territories concerned.
- 118.** The Committee noted the information in the document and the comments made.

**VI. Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART): Interim report on allegations submitted by teachers' organizations (Seventh item on the agenda)**

- 119.** The Committee had before it a paper prepared by the Office<sup>10</sup> providing background on the CEART and summarizing key points of the CEART's interim report<sup>11</sup> on allegations presented to it by teachers' organizations concerning the international Recommendations on teachers.
- 120.** The Employer Vice-Chairperson noted in particular that the interim report concerning Japan, which followed a fact-finding mission by members of CEART, suggested the parties' willingness to engage in dialogue. He agreed to the point for decision. However, he suggested more legally appropriate language than "allegations of non-observance" of this essentially non-binding Recommendation, which could give rise to misunderstandings; alternative terminology such as "submissions regarding the application" or "requests for interpretation" of the ILO/UNESCO Recommendations should be considered.

<sup>10</sup> GB.303/LILS/7.

<sup>11</sup> CEART/INT/2008/1.

121. The Worker Vice-Chairperson noted that the CEART mission reflected the detailed submissions made by the Japan Teachers' Union (NIKKYOSO), affiliated to Education International and the main national teachers' union in Japan, indicating that the approach of the Government on the issues in question should implement both the letter and the spirit of the relevant provisions of the ILO/UNESCO Recommendation concerning the Status of Teachers, 1966. In view of the severe limits on the time for discussion within the Committee, the Workers' group had agreed not to enter into the substance of the interim report. The speaker supported the point for decision.
122. The representative of the Government of Japan expressed respect for the members of the CEART who participated in the investigation of the allegation presented by the All Japan Teachers and Staff Union (ZENKYO). He expressed his gratitude for the fair evaluation by the CEART of the Government's recent efforts in relation to the allegation. Respecting the spirit of the Recommendation concerning the status of teachers, the Government had taken forward-looking measures on educational administration that fitted with the country's actual situation and legislation. In the process, measures had been improved to ensure that the teacher evaluation system mentioned in the allegation by ZENKYO was fair and appropriate. These efforts had been faithfully explained to the fact-finding mission in April 2008. While the interim report highly evaluated the Government's measures, it contained statements and recommendations which did not take into full consideration the actual situation and legislation in Japan. The Government was disappointed that there was not a sufficient understanding of Japan's situation, legislation and the measures undertaken by the Government. It was difficult to accept certain statements and recommendations. While respecting the spirit of the Recommendation, the Government intended to further implement the relevant policies through methods that fitted the country's actual situation and legislation, placing the highest priority in its policies on provisions that would be of the greatest benefit to the children, who were the driving force in Japan's future.
123. *The Committee on Legal Issues and International Labour Standards recommends that the Governing Body:*
- (a) *take note of the interim report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel relating to allegations on the non-observance of certain provisions of the ILO/UNESCO Recommendation, 1966, in Ethiopia and Japan, and the UNESCO Recommendation, 1997, in Australia;*
- (b) *authorize the Director-General to communicate the report to the Governments of Australia, Ethiopia and Japan and to the National Tertiary Education Union of Australia, the Ethiopian Teachers' Association, Education International and teachers' organizations in Japan that participated in meetings with the CEART fact-finding mission in April 2008, and to invite them to take the necessary follow-up action as recommended in the report.*

Geneva, 18 November 2008.

*Points for decision:* Paragraph 15;  
Paragraph 17;  
Paragraph 70;  
Paragraph 99;  
Paragraph 111;  
Paragraph 123.



## Appendix I

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(article 19 of the Constitution of the  
International Labour Organization)*

REPORT FORM CONCERNING EMPLOYMENT INSTRUMENTS  
(ARTICLE 19 QUESTIONNAIRE)

Geneva

2008

INTERNATIONAL LABOUR OFFICE

*Article 19 of the Constitution of the International Labour Organization relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:*

5. In the case of a Convention:
- ...
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.
- ...
6. In the case of a Recommendation:
- ...
- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.
7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
  - (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal Government shall:  
...
    - (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;
    - (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.
- ...

*In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.*

#### REPORT

to be made no later than 31 May 2009, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of ....., on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire.

## Article 19 questionnaire on employment

This questionnaire contains three parts, Part II is optional

### Part I: Impact of ILO instruments

The following table sets out selected instruments to be covered by the article 19 questionnaire concerning the strategic objective of employment. The objective of this table is to get information from member States, employers' and workers' organizations on the law and practice in countries regarding non-ratified Conventions and Recommendations as well as obstacles to ratification of the relevant Conventions. It also seeks information on member States' needs and suggestions for standards-related action.

	A. (1) If your country has not ratified the following Conventions, what are the obstacles or other reasons that impede or delay ratification and what are ratification prospects? (2) To what extent does your country give effect to the provisions of the following non-ratified Conventions and Recommendations?	B. Please answer the following three questions for the six instruments:		
		(1) What suggestions would your country wish to make concerning possible standard-setting action (including new standards, revision) review of the status of the instruments or other action to be taken by the ILO?	(2) Has there been any policy support and technical cooperation support provided by the ILO to give effect to the instruments in question? If it was the case, what has been the effect of that support?	(3) What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?
Employment Policy Convention, 1964 (No. 122) Employment Service Convention, 1948 (No. 88) Private Employment Agencies Convention, 1997 (No. 181) Human Resources Development Convention, 1975 (No. 142) Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) Promotion of Cooperatives Recommendation, 2002 (No. 193)				

## Part II: Trends, policies and developments

	Yes/No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc)
<b>I. National employment policy</b>				
Please indicate whether your country has:				
1. Adopted an active policy to promote full, productive and freely chosen employment? <b>C122 Art. 1, para. 1</b>				
2. Taken measures to promote employment within the framework of a coordinated economic and social policy? <b>C122 Art. 1, para. 3; Art. 2</b>				
3. Established mechanisms to monitor progress toward full, productive and freely chosen employment, and to ensure coordination among key institutions? <b>C88 Art 1, para. 2; C122 Art. 2; C142 Art. 1, para. 1; C181 Art. 13, paras 1–2</b>				
<b>Consultation</b>				
Please indicate whether your country has:				
4. Consulted the social partners in the formulation and execution of employment measures? <b>C122 Art. 3; C88 Arts 4–5</b>				
5. Consulted in the formulation and execution of employment measures, the persons affected by these measures (including the rural sector and the informal economy)? <b>C122 Art. 3</b>				

	Yes/No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc)
<b>II. Policies</b>				
6. Has your country taken measures to:				
(i) ensure that its employment policies cover and take special account of the informal economy?				
(ii) promote transition of informal activities to the formal economy?				
(iii) consult social partners in the adoption of these measures?				
Please indicate whether your country has:				
7. Adopted, as an integral part of its employment policy, a free public employment service. <b>C88 Art. 1</b>				
8. Regulated private employment agencies and established cooperation between private employment agencies and the public employment service. <b>C88 Art. 1, para. 2 and Art. 11; C181 Arts 3 and 13</b>				
9. Does your employment policy contain measures to meet the needs of the following particular categories of workers:				
(i) women;				
(ii) young people;				
(iii) people with disabilities;				
(iv) older workers;				
(v) workers in the informal economy;				
(vi) migrant workers;				
(vii) rural workers.				

	Yes/No	Relevant legislation	Main policies, other measures and institutional arrangements	Comments (e.g. effectiveness, impact, global influences, etc)
<b>III. Skills development</b>				
10. Has your country adopted measures relating to vocational training, retraining and further training:				
(i) with institutions to bring employers, workers and training providers together to improve skills matching and the quality and relevance of training? <b>C142 Art. 5</b>				
(ii) directed towards creating prospective employment opportunities, i.e. anticipating future growth sectors and their skills needs? <b>C142 Art. 1</b>				
(iii) in order to encourage individuals to develop and update their competencies and skills to enable them to adapt to the labour market and engage in productive employment? <b>C142 Art. 1, para. 5</b>				
(iv) in order to create a conducive environment for enterprises to invest in providing learning opportunities? <b>R189 Para. 10(3)</b>				
<b>IV. Enterprise development</b>				
11. Have the following measures been taken by your country:				
(i) the promotion and pursuit of an environment conducive to the creation and growth of small and medium-sized enterprises? <b>R189 Para. 2 and Part II</b>				
(ii) the adoption and implementation of a policy and legal framework favourable to cooperatives? <b>R193</b>				
(iii) the adoption and implementation of policies and programmes that support a service infrastructure for SMEs, and promote a culture of entrepreneurship? <b>R189 Parts III and IV</b>				

### Part III

Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.

Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

## Appendix II

### 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 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	O	O
Australia	X	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
Brunei Darussalam	●	●	●	●	●	●	●	X
Canada	◆	X	X	■	X	X	■	X
Cape Verde	X	X	X	X	X	X	O	X
China	●	●	◆	◆	X	X	X	X
Cuba	X	X	X	X	X	X	X	▲
Eritrea	X	X	X	X	X	X	X	O
Gabon	X	X	X	X	X	X	O	X
Ghana	X	X	X	X	X	X	O	X
Guinea-Bissau	X	X	O	X	X	X	O	X
Haiti	X	X	X	X	X	X	O	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	O	O	O	O
Korea, Republic of	▲	■	■	■	X	X	X	X
Kuwait	X	X	X	X	O	X	X	X
Lao People's Democratic Republic	X	●	●	●	X	X	X	X
Lebanon	X	X	▲	X	X	X	X	X
Liberia	X	X	X	X	O	X	●	X
Malaysia	X	▲	◆	X	X	◆	X	X
Marshall Islands	–	–	–	–	–	–	–	–
Mexico	X	X	X	◆	X	X	■	X
Morocco	X	X	▲	X	X	X	X	X
Myanmar	X	◆	X	◆	◆	◆	◆	◆
Namibia	X	X	X	X	◆	X	X	X
Nepal	X	X	●	X	X	X	X	X
New Zealand	X	X	◆	X	X	X	●	X
Oman	X	X	●	●	●	●	X	X
Qatar	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
Saint Lucia	X	X	X	X	X	X	●	X
Saudi Arabia	X	X	◆	◆	X	X	◆	X
Sierra Leone	X	X	X	X	X	X	○	○
Singapore	X	●	◆	X	X	●	X	X
Solomon Islands	X	○	○	○	○	○	○	○
Somalia	X	X	–	–	–	X	–	–
Sudan	X	X	●	X	X	X	X	X
Suriname	X	X	X	X	▲	▲	▲	X
Thailand	X	X	■	■	X	●	X	X
Timor-Leste	●	●	●	●	●	●	●	●
Turkmenistan	X	X	X	X	X	X	○	●
Tuvalu	–	–	–	–	–	–	–	–
United Arab Emirates	X	X	◆	◆	X	X	X	X
United States	◆	X	◆	◆	◆	○	◆	X
Uzbekistan	X	X	○	X	X	X	○	X
Vanuatu	X	X	X	X	X	X	○	X
Viet Nam	X	▲	●	●	X	X	X	X