



## Governing Body

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### Legal Issues and International Labour Standards Section

**LILS**

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## DRAFT MINUTES

## Legal Issues and International Labour Standards Section

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## Legal Issues Segment

### First item on the agenda

#### **Privileges and immunities of the International Labour Organization: Identification document for Employer and Worker members of the Governing Body** (GB.322/LILS/1)

1. *The Employer coordinator* said that his group reaffirmed its support for the proposed identification document. It noted that the usefulness of the document would depend upon its recognition in practice and, in that respect, assumed that the ILO contact telephone number would be accessible both day and night for the purpose of confirming the validity of the document. The group agreed with the proposed evaluation of the practical usefulness of the document at the end of the current term of the Governing Body and supported the draft decision.
2. *The Worker spokesperson* said that her group considered that sufficient safeguards were provided to address the concerns that had been raised by Governments in the course of previous discussions of the item. The group supported the draft decision.
3. *Speaking on behalf of the industrialized market economy countries (IMEC)*, a Government representative of Canada welcomed the improved detailed proposal that included nearly all of its previous requests. Absorption of the cost of the document within the budget of the Office was welcomed, as was the proposed evaluation at the end of the current term of the Governing Body. IMEC wished to limit the authority for card issuance to the current Governing Body and to require a new decision for future Governing Bodies. It therefore suggested amending the draft decision to include the words “for 2014–17” after the words “identification document”.
4. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Cuba thanked the Office for taking many of its previous comments into consideration. The group was willing to support the proposed format of the document, on condition that the text on the back of the document included the statement “These privileges and immunities may not be invoked before the State of which the holder is a national”.
5. *A representative of the Director-General (Deputy Legal Adviser)* said that the Office wished to propose two very slight modifications to the amendment proposed by GRULAC, which would not affect in any manner the scope or effect of the amendment. The English and French statements on the back of the card should be aligned with the wording of Article V, section 17, of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and contain the words “applicable” and “opposable” instead of “invoke” and “invoquer”. Moreover, the Spanish should contain the word “titular” instead of “persona” so as to conform with the first sentence of the statement.
6. *Speaking on behalf of GRULAC*, a Government representative of Cuba said that his group agreed to the proposed modifications.

7. *Speaking on behalf of the Africa group*, a Government representative of Angola said that his group reaffirmed its position that the document had no practical use, given that it was neither a piece of national identification nor a travel document, and would have a purely declaratory value. It nevertheless did not object to the document, despite its cost.
8. *The Employer coordinator* agreed to the amendments proposed by GRULAC and IMEC.
9. *The Worker spokesperson* agreed to the amendment proposed by GRULAC, but emphasized that the amendment gave visibility to what her group considered a significant weakness of the 1947 Convention – that is, that the privileges and immunities were not applicable in relation to the authorities of the State of which the person was a national or of which he or she was or had been a representative. The group looked forward to examining in the Governing Body possible ways to strengthen the protection of Worker representatives against victimization. It also agreed to the amendment proposed by IMEC.

### **Decision**

**10. *The Governing Body requested the Director-General:***

- (a) *to issue an identification document for 2014–17 for Employer and Worker members of the Governing Body as described in this document, with the following statement on the back of the document: “These privileges and immunities are not applicable in relation to the authorities of the State of which the holder is a national”; and*
- (b) *to evaluate the usefulness of the document at the end of the current term of the Governing Body.*

(GB.322/LILS/1, paragraph 11, as amended.)

## **International Labour Standards and Human Rights Segment**

### **Third item on the agenda**

#### **Report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014)** (GB.322/LILS/3)

11. *The Worker spokesperson* expressed appreciation for the important steps taken by the tripartite constituents and the Office towards the implementation of the Maritime Labour Convention, 2006 (MLC, 2006), and welcomed the amendments to the Code of the Convention, which were expected to enter into force on 18 January 2017. The procedure outlined in paragraphs 5–10 of the report of the Chairperson of the Special Tripartite Committee (STC) demonstrated the added value of the modern mechanisms of the MLC, 2006, which worked on the basis of social dialogue and tripartism. Paragraph 11 of the Chairperson’s report made reference to the need for uniform implementation of the definition of a seafarer, a concern that had been raised previously by seafarers and more

recently during the first meeting of the STC. Specifically, the definition of the term “seafarer”, as adopted in national legislation, was sometimes overly restrictive and had led to the exclusion of cadets and personnel employed under outsourced service agreements, such as security personnel, and repair and maintenance technicians whose main place of work was on a vessel. The group also had concerns related to the costs for seafarers of travel to the vessel and of obtaining a visa, as well as to issues related to social security. Those points needed to be addressed, through tripartite work in the sector. She expressed support for the draft decision.

12. *The Employer coordinator* expressed appreciation for the successful outcome of the first meeting of the STC. The amendments to the Code of the MLC, 2006, had been adopted by an overwhelming majority. It was to be hoped that those amendments would enter into force in 2017, as foreseen. The first meeting had provided a forum for a useful exchange of information and experiences on the working of the MLC, 2006. He expressed agreement with the draft decision, and indicated that the important work of the STC should be supported. In that respect, the next meeting of the STC, which was scheduled for 2016, should take place in the period January–March 2016, if the programme and budget allowed it. Clarification was requested as to why the meeting had not been scheduled for 2015.
13. *Speaking on behalf of the Africa group*, a Government representative of Angola noted that the STC had voted overwhelmingly in favour of the proposed amendments to the Code of the MLC, 2006, that had been submitted to it. Moreover, an important and very useful exchange of information had taken place during the first meeting of the STC. In particular, the need for uniform application of the definition of a seafarer had been discussed. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) might wish to consider that issue when it conducted its review of reports under article 22 of the ILO Constitution. Regular meetings of the STC, as recommended in the resolution adopted by the participants at the first meeting, would enable the further exchange of information and the promotion of social dialogue at the international level and ensure a more effective implementation of the Convention. The Africa group took due note of the arrangements concerning the requests for consultation submitted under Article VII of the Convention. The Africa group was not opposed to the draft decision.
14. *Speaking on behalf of the EU and its Member States*, a Government representative of Italy said that the following countries aligned themselves with the statement: Turkey, Montenegro, Serbia, Albania, Bosnia and Herzegovina, Republic of Moldova and Georgia. The recent amendments to the Code of the MLC, 2006, were important as they constituted a sustainable solution on the matters of injury, illness or death and abandonment of seafarers and contributed significantly to enhancing the attractiveness of the seafarers’ profession. The second meeting of the STC should be held in 2016. The EU should continue to be invited to participate in meetings of that Committee, given the contribution of EU legislation to the implementation of the MLC, 2006, and the important impact the work of the STC might have on that legislation. She expressed support for the draft decision.
15. *Speaking on behalf of GRULAC*, a Government representative of Cuba noted that the first meeting of the STC had resulted in useful bipartite and tripartite exchanges and that consensus had been reached on the application of the Convention in areas of common interest such as the regulation of seafarer recruitment and placement services and the jurisdiction with respect to seafarers’ employment agreements. Furthermore, it had highlighted the need for uniform application of the definition of a seafarer. He drew attention to the amendments to Regulation 2.5 on “Repatriation” and Regulation 4.2 on “Shipowners’ liability”. He welcomed the fact that those amendments would enter into force on 18 January 2017 and that a resolution had been adopted on transitional measures of an operational nature concerning the financial security requirements in respect of

abandonment of seafarers and for shipowners' liability. Lastly, he recognized the need to hold regular meetings of the Committee over the following years and supported the draft decision.

16. *A representative of the Director-General (Director, International Labour Standards Department (NORMES)) provided the following clarifications in response to the Workers' and Employers' statements. On the need for uniform implementation of the definition of a seafarer in the MLC, 2006, the definition had been extensively discussed during the development of the Convention; the preparatory work for the MLC, 2006, would be helpful in that regard, as well as with respect to the question of costs, raised by the Workers. The CEACR would begin examining the first reports under article 22 of the ILO Constitution at its upcoming session in November–December 2014 and those questions might well be the subject of consideration. Where it was not clear whether the MLC, 2006, addressed those specific issues, the STC would be the proper body to discuss them. In relation to the issue of social security provisions under the MLC, 2006, the Office was preparing an inventory on the provision of social protection and social security for seafarers, which should provide the information envisaged in the resolution concerning social security adopted at the 94th (Maritime) Session of the International Labour Conference in 2006. The Office had already consulted the social partners concerned on that initiative. With regard to the dates for the second meeting of the STC, it was not possible for it to be held in 2015, as it had not been included in the Programme and Budget for 2014–15. However, it was foreseen that the meeting would be held in the first quarter of 2016, as would be reflected in the decision.*

## **Decision**

### **17. The Governing Body:**

- (a) *took note of the information presented in the report of the Chairperson of the Special Tripartite Committee to the Governing Body (GB.322/LILS/3), including the information in paragraph 14 of that report and paragraph 442 of the final report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), regarding the arrangements for consultation under Article VII of the MLC, 2006;*
- (b) *reappointed for two years Mr Naim Nazha as the Chairperson of the Special Tripartite Committee for a second consecutive term; and*
- (c) *decided to convene the second meeting of the Special Tripartite Committee in the first quarter of 2016, subject to financial arrangements being made for this purpose.*

(GB.322/LILS/3, paragraph 17, as amended according to the Governing Body discussion.)

## Fourth item on the agenda

### Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2016 (GB.322/LILS/4)

18. *The Employer coordinator* recalled that the topic of recurrent discussions after 2017 might not be determined until after the evaluation by the Conference of the impact of the ILO Declaration on Social Justice for a Fair Globalization, 2008, at its 105th Session (2016). The choice of instruments on which reports should be requested under article 19 of the Constitution in 2016 therefore had to be made on an ad hoc basis. Both options proposed in the document were pertinent. However, occupational safety and health (OSH) was an area that deserved special attention by the ILO and its constituents. The ILO had an important role to play in that area. ILO standards could be an important building block in that regard, and a general discussion on OSH instruments could give impetus to more cooperation between the ILO and its constituents towards improving the OSH situation in member States. He expressed support for the draft decision.
19. *The Worker spokesperson* expressed support for a General Survey concerning the OSH instruments applicable to the mining, construction and agriculture sectors, in the context of the instruments providing a promotional framework for OSH, which were referenced in paragraph 3 of the document. The situation in the construction, agriculture and mining sectors required special attention due to their hazardous nature and the high accident and death rates in those sectors. A General Survey was timely given that no General Survey had previously been conducted on those instruments. It could give impetus to the promotion of their ratification and implementation. However, a General Survey on OSH could not be carried out without taking into account the Occupational Safety and Health Convention, 1981 (No. 155), the first comprehensive instrument on safety and health applicable to all industries, which remained the framework for the different sectoral instruments. The conclusions adopted by the CEACR in the 2009 General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, should be taken into account and, where relevant, integrated into the next General Survey in order to ensure coherence and maintain a holistic and integrated approach to the issue. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), was an important Convention, but should not yet be the subject of a General Survey. The work of the Office regarding the ratification and effective implementation of that Convention needed to be strengthened. The Office also needed to take into account the outcome of the first World Conference on Indigenous Peoples (2014), which encouraged “those States that have not yet ratified or acceded to the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), to consider doing so” and recalled “the obligation of ratifying States under the Convention to develop coordinated and systematic action to protect the rights of indigenous peoples”.

20. The group supported the draft decision. It also requested the Office to develop a proposal for a comprehensive General Survey on the working-time instruments, in preparation for a decision concerning the General Survey to be prepared by the CEACR in 2017. The last General Survey concerning the Weekly Rest (Industry) Convention, 1921 (No. 14), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and the Holidays with Pay Convention (Revised), 1970 (No. 132), as well as the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), and the Reduction of Hours of Work Recommendation, 1962 (No. 116), had been in 1984. The remaining instruments on working time had never been the subject of a General Survey, with the exception of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), which had been examined in a General Survey in 2005.
21. *Speaking on behalf of the Africa group*, a Government representative of Botswana indicated that the OSH instruments were an ideal subject for the General Survey to be prepared in 2016. Urgent action was required to address the numerous challenges pertaining to OSH. A General Survey would be timely and critical to the efforts of member States in the implementation of those instruments. It would help focus attention on hazardous workplaces with a view to ensuring the protection of workers in various sectors.
22. *Speaking on behalf of IMEC*, a Government representative of Canada said that recent fatal accidents in the garment and mining sectors had underlined that much needed to be done to improve OSH in many countries and sectors. That issue was strongly related to the right to life and needed the same attention as the core ILO labour standards. For example, the European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe referred to OSH as a fundamental right, as well as to the important role of the enforcement of OSH regulations in protecting workers' rights. A General Survey on OSH, undertaken in the context of the overarching promotional framework of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), could give impetus to further ratifications of the relevant Conventions. The Office was therefore requested to prepare a report form on the OSH instruments enumerated in paragraph 3 of the document for consideration by the Governing Body at its session in March 2015. However, as it had not yet been the subject of a General Survey, Convention No. 169 could be an appropriate subject for the General Survey to be discussed by the Conference at its session in 2018.
23. *The Employer coordinator*, in response to the statement of the Workers' group, expressed agreement that the conclusions of the 2009 General Survey of the CEACR should be taken into account in the preparation of the General Survey in 2016.
24. *The representative of the Director-General* (Director, NORMES), noting the tripartite consensus, said that the draft decision would be revised to reflect the discussion.

## Decision

25. ***The Governing Body requested the Office to prepare for the consideration of its 323rd Session (March 2015) a draft report form for the General Survey for 2016 concerning the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Mines Convention, 1995 (No. 176), and the Safety and Health in Agriculture Convention, 2001 (No. 184), and their respective Recommendations in the context of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and its corresponding Recommendation, taking into account the conclusions of the Committee of Experts on the Application of Conventions and Recommendations***



*in its General Survey of 2009 concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, as well as the related discussion and conclusions of the Committee on the Application of Standards of the International Labour Conference at its 98th Session (2009).*

(GB.322//LILS/4, paragraph 7, as amended according to the Governing Body discussion.)

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