INTERNATIONAL LABOUR OFFICE

Governing Body

326th Session, Geneva, 10–24 March 2016

GB.326/LILS/PV/Draft

Legal Issues and International Labour Standards Section

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Legal Issues and International Labour Standards Section

Contents

Legal Issues Segment

First item on the agenda

Follow-up to the discussion on the protection of Employers' and Workers' delegates to the International Labour Conference and members of the Governing Body in relation to the authorities of a State of which they are a national or a representative
(GB.326/LILS/1)

1. *The Worker spokesperson* said that the 1970 resolution and the 2010 amendment to the Standing Orders of the International Labour Conference did not fully address the protection gap resulting from the exception contained in Article V, section 17, of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. That was reflected by complaints submitted to the Committee on Freedom of Association (CFA) and requests for intervention addressed by the Workers' group to the Director-General to guarantee the safety of certain Workers' delegates in connection with views expressed at the Conference on the situation of workers' rights in their respective countries. He noted that a number of international organizations had in the past amended their respective annexes to the 1947 Convention to provide protection for additional categories of persons and that the amendment process was neither complicated nor lengthy. His group was willing to accept the proposed limitations to the coverage of the proposed new immunities, except regarding the exclusion of ILO Regional Meetings, which should be included, owing to their political significance. He noted and supported the scope of the proposed immunities set out in paragraph 14. Pending clarification of the issue of Regional Meetings, his group supported the draft decision.

2. *The Employer spokesperson* said that the protection offered by the draft resolution should be extended to include Employers' and Workers' delegates or advisers to the ILO Regional Meetings in view of the elevated importance of Regional Meetings and also in order to ensure greater consistency with Article V, section 13, of the 1947 Convention. There did not appear to be any convincing reason to provide immunity from legal process in respect of oral or written statements of Employers' and Workers' delegates at ILO Regional Meetings for third countries but not as far as their own countries were concerned. As regards the design of the proposed provisions, it was noted that new paragraph 2(i)(d) of the revised Annex I to the 1947 Convention concerned the inviolability of all papers and documents, not only passports or travel authorizations, while the provisions of new paragraph 2(i)(c) related to restrictions on free movement. With the change proposed, the Employers' group supported the draft decision.

3. *Speaking on behalf of the Africa group,* a Government representative of Angola said that at the 325th Session his group had expressed concern as to the relevance of the proposals under consideration and to the fact that the immunities in question were modelled on those enjoyed by parliamentarians in a number of countries. While the draft resolution provided for the waiver of the privileges and immunities by the Conference or the Governing Body, the group remained concerned regarding the authority for deciding on such waiver in situations where differences of interpretation might arise concerning the distinction between acts performed by persons in their official capacity and in their personal capacity, all the more so since the national institutions involved (parliament, ministry of foreign affairs, ministry of internal affairs) might have a different view of the recognition of those privileges and immunities.

His group wished to be assured that the Organization's various offices in countries that accepted the revision of Annex I would not become places of refuge for persons attempting to avoid arrest for a common-law offence or legal proceedings. The principle of inviolability could not be absolute, could not be invoked in cases where an offender had been caught in the act and could not be used to hinder legal proceedings in such cases. Member States should be granted more time to hold consultations on the Office's new proposals. The group put forward the following amendment to the draft decision: "The Governing Body notes the proposals made by the Office and decides to postpone consideration of the draft decision to the 329th Session of the Governing Body (March 2017), to allow time for tripartite consultations at the national level."

4. *Speaking on behalf of the group of industrialized market economy countries (IMEC),* a Government representative of the United States said that the proposed amendment to Annex I to the 1947 Convention had the advantage of establishing a legally binding protection. However, the adoption of the revised Annex I at the Conference would lose political weight if there were significant opposition in that regard; it would involve lengthy and complicated approval and acceptance procedures for certain ILO Members; and it would have limited impact on the situation of Workers' and Employers' delegates in many instances. There was uncertainty as to whether any precedent existed in international law for the recognition of immunity by a State for its own nationals as extensive as that envisaged in the draft resolution. Although detailed provisions relating to immunity for Members of the European Parliament were laid down by Protocol No. 7 on the Privileges and Immunities of the European Union, procedures related to immunity and its waiver were thoroughly regulated by the Rules of Procedure of the European Parliament. Clarification was required concerning the ILO's envisaged criteria and procedures for waiving immunity. The Office should further examine the possible repercussions for both international and national law of immunity from arrest or detention during the journey to or from the place of meeting, and the procedures to be followed for every eventuality should be well defined.

5. With regard to the draft resolution, IMEC proposed numbering the new paragraph of Annex I to the 1947 Convention as 1bis, rather than 2; inserting the following clause at the end of the introductory section (i): "… the following privileges and immunities, while immunity cannot be claimed when the person is found in the act of committing an offence: …" ; moving the words "both during and subsequent to the discharge of their duties" in subsection (i)(a) immediately after the phrase "immunity from the legal process" at the beginning of the subsection; removing the words "in its opinion" contained in section (ii) and introducing a new phrase "such as a commission of a crime by said Employer or Worker" after the clause "… would impede the course of justice …" ; and inserting the clause "– if the national legal system allows –" after the words "to apply" in the last two paragraphs of the draft resolution. Should its proposed amendments be accepted, IMEC would support the draft decision.

6. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC),* a Government representative of Mexico said that his group recognized the need to respect the freedom of speech of employers and workers participating in ILO meetings and underlined the importance of article 40 of the ILO Constitution and the resolution concerning freedom of speech of non-governmental delegates to ILO meetings adopted by the Conference at its 54th Session in 1970. However, the similarity of the proposed privileges and immunities to those enjoyed by parliamentarians of member States gave cause for concern. The issue should not be included on the agenda of the 105th Session of the Conference but rather taken up again at a future session of the Governing Body. GRULAC did not support the draft decision contained in the document, or the proposal made by a Government representative of the United States on behalf of IMEC.

7. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of India endorsed the amendment to the draft decision put forward by a Government representative of Angola on behalf of the Africa group.

8. *A Government representative of Zimbabwe* said that the issues in question mainly fell within the purview of other government officials and, consequently, further consultation was required at the national level. To that end, the proposals made by the Office should be communicated to all member States, including those not represented in the Governing Body.

9. *The Employer spokesperson*, referring to the proposal made by the Africa group, questioned the need for additional consultation given that the basis for the proposals had been known for some time. Protection for Workers' and Employers' delegates at ILO meetings had to be put in place as a matter of urgency. However, the IMEC proposal was complicated and would necessitate legal analysis.

10. *The Worker spokesperson* said that clarification on the various legal issues raised thus far would be welcome. Further discussion and consultation on the issue should take place within the Governing Body, rather than at the national level. The proposal made by the Africa group could be amended to read: "The Governing Body takes note of the proposal and requests that the item be postponed for discussion and decision at the 328th Session of the Governing Body in November 2016, to allow more time for tripartite consultation."

11. *A representative of the Director-General* (Legal Adviser) said that the coverage of the revised Annex I was currently limited to the meetings of the executive or decision-making bodies of the Organization, namely the International Labour Conference and the Governing Body, but it was possible, as the Workers' and Employers' groups wished, to extend the scope of the revised Annex to include Regional Meetings. The proposal in the paper was not modelled on parliamentary immunities: it was not proposed that any State should apply its system of parliamentary immunity to Employers' and Workers' delegates of its nationality. However, the diversified system of parliamentary immunity could be usefully considered in relation to points (a) and (b) of paragraph 14, as it contained analogous elements. Systems of parliamentary immunities were extremely diverse and were often articulated around a basic distinction between the "parliamentary privilege" or "non-liability" (i.e. protection from legal action resulting from an opinion expressed or vote cast) and "parliamentary immunity" or "inviolability" (i.e. protection against civil or criminal proceedings for acts performed outside the exercise of their parliamentary function). Even though rules on parliamentary *inviolability* were becoming increasingly controversial (and in most countries did not apply in cases of flagrante delicto), the rules on parliamentary *non-liability* appeared more homogeneous and enjoyed wide acceptance. With regard to the concern expressed about the ILO's authority to adjudicate on disputes that might arise in relation to the practical application of a revised Annex, two procedural guarantees existed. First, it would be for the International Labour Conference or the Governing Body to decide whether to waive immunity; and second, according to sections 24 and 32 of the 1947 Convention, differences as to the application or interpretation of the Convention were to be referred to the International Court of Justice for a binding advisory opinion. It was true that the European Parliament had detailed rules and procedures on parliamentary immunities and their waiver. There was no ILO equivalent at the current time. He could not yet give details of the envisaged criteria for the waiver of immunity other than those contained in the draft provision, although general principles that could be referred to existed (such as those developed by the European Parliament). The Office had noted the suggestions that it should study existing procedures used to determine when to waive immunity and consult non-Governing Body members. With regard to IMEC's suggestion to remove the words "in its opinion" from the proposed section (ii) – those words were standard language already contained in Annex I to the 1947 Convention and further clarified that whether the conditions for a waiver of immunity were fulfilled was ultimately for the Organization to determine.

12. *The Employer spokesperson* agreed with the Workers' group that a decision should be deferred until no later than November 2016, by which time the Governing Body should have a new paper to consider, which would incorporate the elements that had been mentioned by the Legal Adviser and any other relevant information.

13. *Speaking on behalf of the Africa group*, a Government representative of Angola accepted the Workers' proposal that the matter be reconsidered in November 2016, and said that consultations with States and the ILO social partners should take place in the meantime.

14. *Speaking on behalf of ASPAG*, a Government representative of India sought clarification regarding the nature of the consultations to be held. National-level consultations with other ministries were required, as ministries of labour, which were represented at the Governing Body, would not be those responsible for ensuring compliance with the protection accorded.

15. *Speaking on behalf of GRULAC*, a Government representative of Mexico supported the proposal to return to the item under consideration at a later date. Given the need for consultations with various national ministries in the interim, the Office should prepare an updated document.

16. *A representative of the Director-General* (Deputy Director-General, Management and Reform) said that an updated paper would indeed be prepared. He envisaged at least two rounds of consultations before November 2016: the details of the new paper would be discussed with the Workers' and Employers' secretariats, the Regional Coordinators and the Government group representatives; subsequently group and national-level consultations could be held.

17. *Speaking on behalf of the Africa group*, a Government representative of Angola said that the proposed amendment to the draft decision should explicitly provide for national-level consultations.

Decision

18. ***The Governing Body took note of the proposals made by the Office and decided to postpone the decision on this item until its 328th Session (November 2016) to allow time for tripartite consultations, including at the national level.***

(GB.326/LILS/1, paragraph 16, as amended.)

Second item on the agenda

Amendments to the Compendium of rules applicable to the Governing Body of the International Labour Office
(GB.326/LILS/2)

19. *A representative of the Director-General* (Legal Adviser) explained that since the web posting of the paper, the Office had identified additional points requiring correction. They were mostly editorial, however, five proposals added new text either to ensure terminological consistency or to clarify existing provisions. Firstly, the reference in paragraph 37 of the Introductory note to the International Institute for Labour Studies, which had ceased to exist, should be removed. Secondly, in paragraph 1.5.4 of the Standing Orders, "committees and working parties" should be added for the sake of consistency with

paragraph 4.2. Thirdly, in paragraphs 1.7.1 and 1.7.2 of the Standing Orders, the reference to the seats "reserved for the eighteen States selected by the Government electoral college" should be removed and the words "elective seats" should be inserted, in order to clarify that the system for filling vacancies applied to both regular and deputy Government representatives. Fourthly, in paragraph 3.2 of the Standing Orders, the words "after consultation with the other officers" should be replaced by "after consulting the Vice-Chairpersons", in order to reflect the language used in paragraph 24 of the Introductory note. Lastly, the words "and entitled to vote" should be added at the end of paragraph 6.1.3 of the Standing Orders, in line with established practice and a similar amendment proposed to paragraph 6.3.1.

20. *The Worker spokesperson* expressed support for the draft decision, including the additional amendments put forward.

21. *The Employer spokesperson* echoed the Workers' point of view. He proposed that at some point further streamlining of the Introductory note and the Standing Orders should be envisaged to better reflect current practice.

22. *Speaking on behalf of IMEC*, a Government representative of Canada, recalling his group's satisfaction with the Governing Body reform process – key achievements of which were enhanced government involvement, the screening group's agenda setting, the continuous plenary and the holding of only one meeting at a time – welcomed the proposed amendments and corrections to the Compendium. In addition, IMEC tabled the following further amendments to the Introductory note of the Compendium. Firstly, in paragraph 1, the full stop after the new sentence "Since … Compendium" should be removed. Secondly, in paragraph 20, in the last sentence, in the bracketed text, "or regional coordinators" should be deleted and the following sentence should be added at the end of the paragraph: "Similarly, the nominations of regional coordinators are to be communicated by their respective regional groups to the Chairperson of the Governing Body". Those changes would serve to clarify that regional coordinators were nominated by regional groups and not agreed by the whole Government group. Thirdly, in paragraph 21, after "her representative", "as well as with the regional coordinators" should be added, in order to enshrine a helpful practice. Fourthly, in paragraph 31, "full" should be inserted between "each" and "Governing Body", and at the end of the paragraph the full stop should be deleted and "in March/April for the following June and November sessions and in November for the next March session" should be added, in order to further specify the practice. Fifthly, the following should be added at the end of paragraph 33: "It includes, as annexes, a tentative order of business with a clear indication of time frames for each section and a list of the documents prepared by the Office for information only. No more than one meeting should be held at the same time." The insertion would reflect the importance of timing and ensure that the practice of not holding parallel sessions was maintained. Lastly, in paragraph 48, the words "but at the latest within six weeks" should be added to ensure publication in reasonable time.

23. *Speaking on behalf of the Africa group*, a Government representative of Angola supported the draft decision and the amendments presented by the Legal Adviser. With regard to the timelines for the publication of the draft minutes of sessions of the Governing Body, the group considered that they should be web posted as soon as possible, and at any rate, no later than two weeks after the end of each session.

24. *Speaking on behalf of GRULAC*, a Government representative of Mexico saw no basis for the proposed amendment to the second box under paragraph 5 of the Introductory note to replace "regional conferences" with "regional meetings". "Regional conferences" was the expression used in the ILO Constitution and should be kept. The group supported all the other draft amendments contained in the Office document, including the additional draft

amendments presented by the Legal Adviser. Some of the proposed amendments introduced by IMEC went beyond the simple updating of the Compendium and required careful consideration.

25. *The Worker spokesperson* said that his group supported the amendments proposed by IMEC, except for the amendment to paragraph 21. At the time of the Governing Body reform in 2011, it had been agreed that the Chairperson of the Government group could hold consultations with the necessary persons in that group. That practice had later developed into the consultation of the regional coordinators. Although it was accepted practice, his group considered that it was not necessary to institutionalize it in the Compendium as it only concerned the internal functioning of the Government group, not the Governing Body itself.

26. *The Employer spokesperson* shared the Workers' position regarding IMEC's proposed amendments. Internal procedural arrangements within the Government group did not relate to the functioning of the Governing Body. Accordingly, his group supported all the amendments proposed by IMEC, except for the amendment to paragraph 21.

27. *A Government representative of Cuba* requested more time to consider the amendments proposed by IMEC.

28. *Speaking on behalf of GRULAC,* a Government representative of Mexico observed that the amendments proposed by IMEC generally concerned practice and therefore went beyond the initial intention of the amendments. His group therefore requested the postponement of the draft decision to allow more time for consideration.

29. *A Government representative of Brazil* said that the amendments proposed to paragraphs 20 and 21 by IMEC were linked and related to a question of substance, which warranted further reflection before a decision was taken.

30. *Speaking on behalf of IMEC,* a Government representative of Canada said that his group was willing to withdraw the amendment to paragraph 21 and proceed to the adoption of the other amendments.

31. *Speaking on behalf of GRULAC,* a Government representative of Mexico stated that his group did not support the amendment to paragraph 20 proposed by IMEC and recalled that his group could not support the proposal to replace the term "regional conferences" with that of "regional meetings" in the Introductory note.

32. *Speaking on behalf of IMEC,* a Government representative of Canada reiterated that the current wording of paragraph 20 could lead to misunderstandings, as, even if regional coordinators had a key role in coordinating positions within the Government group, "regional coordinator" was technically not a function of the Government group itself. Regional coordinators were appointed independently by the autonomous regional groups and their appointment did not need to be approved by the whole Government group. While the second component of the amendment to paragraph 20 could be dispensed with, the group still wished to delete the words "or regional coordinators" from the text in parenthesis and insert the words "and of the regional coordinators" immediately afterwards for the sake of clarity.

33. *Speaking on behalf of GRULAC,* a Government representative of Mexico said that, while his group concurred with IMEC that "regional coordinator" was technically not a function of the Government group, and while he could support the deletion of the words "or regional coordinators" from the text in parenthesis, GRULAC could not accept a further reference to regional coordinators within that paragraph.

34. *Speaking on behalf of IMEC*, a Government representative of Canada said that his group was willing to postpone consideration of its proposed amendment to paragraph 20. He believed that the proposed amendment to paragraph 21 was no longer under consideration.

35. *Speaking on behalf of GRULAC*, a Government representative of Mexico said that his group wished to postpone not the adoption of the draft decision, but rather any discussion of the role of the regional coordinators and all related amendments to the Compendium.

36. *Speaking on behalf of IMEC*, a Government representative of Canada said that his group was prepared to withdraw its proposed amendment to paragraph 20 on the understanding that regional coordinator nominations were made by the relevant regional groups.

37. *A representative of the Director-General* (Legal Adviser) said that the Office had proposed replacing the term "regional conferences" with that of "regional meetings" so as to reflect the terminology consistently used by the ILO to refer to the conferences convened under article 38 of the Constitution, and to harmonize the language already used throughout the Introductory note (for instance, in paragraph 53), as approved by the Governing Body. Regional meetings had for all intents and purposes replaced regional conferences since 1995. Accordingly, the rules of procedure currently applicable to regional meetings, which were adopted by the Governing Body and approved by the Conference, were entitled "Rules for Regional Meetings". Other terms used in the ILO Constitution that had fallen into disuse included "General Conference", which had been replaced by the term "International Labour Conference".

38. *Speaking on behalf of GRULAC*, a Government representative of Mexico, while noting the explanations provided by the Office, maintained that the term "regional meeting" was being misused. Either the wording should be brought into line with article 38 of the Constitution throughout the Compendium or the Introductory note should be amended to include, after the first mention of "regional conferences", a statement that those conferences had been known as "regional meetings" since 1995 but that the events were those mentioned in article 38 of the Constitution.

39. *Speaking on behalf of IMEC*, a Government representative of Canada said that without a written proposal to examine, which would give a clearer understanding of all ramifications, his group could not support the GRULAC proposal.

40. *A representative of the Director-General* (Legal Adviser) clarified that following the Governing Body decision in November 1995 to replace the ILO Regional Conferences by shorter Regional Meetings with a single agenda item, a set of new rules had been adopted in November 1996 which were subsequently revised in 2002 and 2008. These *Rules for Regional Meetings* clearly indicated that Regional Meetings were to be considered as regional conferences for the purposes of article 38 of the ILO Constitution. If the Governing Body decided to revert to the term "regional conferences", the Compendium would have to be reviewed accordingly.

41. *The Employer spokesperson* saw no point in reversing 21 years of accepted terminology on an issue that would make no difference in terms of outcome and to embark on an editorial review that would involve not only the Compendium, but other documents as well.

42. *Speaking on behalf of GRULAC*, a Government representative of Mexico said that, as a matter of principle, his group was concerned that, because it was difficult to amend the Constitution, alternative ways of changing the constitutional terminology had been found. However, in light of the many years of accepted practice on the current terminology, he could agree to replace the term "conference" by "meeting" and to include a note explaining

that Regional Meetings were considered as the regional conferences referred to in article 38 of the Constitution.

43. *A representative of the Director-General* (Legal Adviser) said that although the reference to "regional conferences" in the document was contained in a text box in the Introductory note, the insertion of an explanatory footnote was feasible.

Decision

44. ***The Governing Body adopted the amendments to its Standing Orders and to the Introductory note to the Compendium of rules applicable to the Governing Body of the International Labour Office proposed in the appendix to document GB.326/LILS/2, as well as those agreed during the discussion.***

(GB.326/LILS/2, paragraph 7, as amended according to the Governing Body discussion.)

International Labour Standards and Human Rights Segment

Third item on the agenda

The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association
(GB.326/LILS/3/1)

45. *The Worker spokesperson* welcomed the report. The group underscored the need for a more robust and systematic follow-up with regard to all of the supervisory mechanisms to ensure that ILO members comply with observations, conclusions and recommendations. In many ways, the report provided too positive an assessment of the supervisory system, one which contrasted to the reality in the world of work. Violations of trade union and labour rights were widespread, even after years of ILO intervention. The speaker also regretted that the report did not present innovative proposals for strengthening the supervisory system. While supporting longer or more frequent sittings of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Worker members rejected the proposal to further "streamline the content of its report", as it had detected a significant decline in the thoroughness of the CEACR's report in recent years. The group supported the common sense suggestion of meetings and exchanges of information between the various committees to enhance coordination, and where relevant with the participation of the Worker and Employer Vice-Chairpersons. Similarly, the group supported the continuation of the dialogue between the Conference Committee on the Application of Standards (CAS) and the CEACR. The speaker observed that the Workers' group proposals as to how the supervisory system could be strengthened were not reflected in the report and was unsure why the proposal in the draft report of the creation of a standing committee to adjudicate representations under article 24 of the ILO Constitution was not included in the final text. The Worker members supported the draft decision calling for further consultations with the constituent groups to formulate recommendations for consideration by the Governing Body, stating that such a process should not aim to once again redefine mandates and methods nor

to return to ideas already clearly rejected. The aim should be to determine how to make the supervisory system meaningful to the constituents and to effectively protect workers' rights.

46. *The Employer spokesperson* thanked the authors for their detailed description of the ILO supervisory system. The report contained valid information as well as certain concrete proposals for improvement, many of which were, however, not new or were superficial. Few suggestions were made to rectify identified shortcomings. The Employers' group considered that the report lacked a critical approach and ambition and ignored the crucially important question of ownership of the supervisory system. The report did not address how well the human rights bodies' supervisory machinery it described worked in practice, which was critical to draw any conclusions for possible improvements of the ILO supervisory procedures. Substantial comments on the draft report made by the Employers' group had not been reflected in, and appended to, the report as had been requested. The main finding from the report was that the ILO supervisory system had over time become very complex, making it difficult for constituents to own the system. Streamlining, simplifying and consolidating the system based on a clear understanding of distinct mandates and functions of individual components was required. Clarity and transparency were essential. The Employers' group supported the draft decision indicating that they hoped that the Director-General would prioritize the formulation of substantial recommendations for consideration by the Governing Body in November 2016, incorporating specific proposals by the social partners and the governments. The Director-General could consider the creation of a working party to deal with the issues.

47. *Speaking on behalf of the Government group*, a Government representative of Ghana thanked the authors for producing the report and indicated that governments were looking forward to further consultations that the Office would undertake, with a view to formulating recommendations that the Governing Body could consider at its 328th Session in November 2016.

48. *Speaking on behalf of GRULAC*, a Government representative of Mexico highlighted the extreme caution with which the report addressed the subject of improvements to the ILO supervisory system. Reiterating the commitment of GRULAC to the supervisory system, he said that efforts should continue with a view to having an objective, impartial, transparent and efficient supervisory system. GRULAC had already spoken at length on previous occasions about possible improvements to the supervisory system, providing two documents, and the report would have benefited from having the results of previous consultations reflected in it. He asked for the results of the consultations to be published together with the report with a view to the examination of the specific proposals. GRULAC supported the draft decision and was prepared to participate actively in future consultations in accordance with the principles of transparency, equity and inclusiveness, with a view to identifying the structural problems that had given rise to the crisis in the supervisory system and making recommendations in that regard.

49. *Speaking on behalf of the Africa group*, a Government representative of Burkina Faso endorsed the Government group's statement and underlined the importance of the supervisory system. Since the report contained no clear indications regarding the way to address the concerns raised, the Africa group encouraged the Director-General to hold consultations with a view to specific and precise recommendations being made at the November 2016 session of the Governing Body.

50. *Speaking on behalf of IMEC*, a Government representative of the United States supported the statement of the Government group and thanked the authors for their joint report, stressing that the report provided useful information and that further consultations on issues related to the report were welcomed. Further exploration of the proposals for annual meetings of the chairpersons of the supervisory bodies and a report from the CFA to the

CAS would be helpful. It was not clear how the question of addressing the interests of unorganized workers related to the transparency and visibility of the ILO supervisory system. Interest was expressed in exploring options for reducing reporting burdens on governments, while at the same time enhancing the functioning of the supervisory system. Cost estimates were requested regarding the options presented in paragraph 138 for split, or longer, sessions of the CEACR. Proposals to increase the efficiency of the CAS proceedings could be considered within the context of the informal tripartite consultations on the working methods of the CAS and, equally, the consolidations of CFA complaints alleging similar violations could be explored. The question of how to ensure the safeguarding of the rights of workers and employers was left open in relation to a possible requirement of exhaustion of national procedures or filtering out of unsubstantiated cases. Further clarification was needed with respect to the reference in paragraph 147 to improved balance between obligations of ratifying and non-ratifying member States. Certain measures merited further consideration, including: the functioning and interrelationship of the different supervisory mechanisms and the effects of overlapping or parallel processes; a better articulation of article 24 and CFA procedures; the codification of established practice in Standing Orders; increasing transparency around receivability criteria; addressing delays in procedures; possibilities for better prioritizing consideration of alleged breaches; and the possibility of taking interim measures aimed at remedying urgent situations. IMEC emphasized the continuing strong support for, and confidence in, the supervisory machinery and supported the draft decision.

51. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of the Netherlands supported the statements made by IMEC and the Government group and indicated that Albania, Turkey, Serbia and Georgia aligned themselves with his declaration. He thanked the authors for a comprehensive and thorough review of the supervisory mechanism and for having ensured tripartite participation in the process. Supporting the draft decision, the speaker indicated a commitment to further improving the ILO supervisory mechanism, which was well designed and functioning. The report was understood as part of a longer term process, in which tripartite participation, transparency and time-efficiency were important, as were suggestions aiming at better coordination and coherence relating to the seriousness of cases, national dispute settlement mechanisms and obligations of ratifying and non-ratifying member States.

52. *Speaking on behalf of ASPAG*, a Government representative of China, thanked the authors for the comprehensive report and expressed support for the proposal of an annual meeting between the Chairpersons of the CAS, the CEACR and the CFA. Transparency could be enhanced by selecting CAS cases according to the objective criteria proposed by the Office. Comments of the supervisory mechanisms ought to stem from the recognized sources delimited by the rules of the Organization to ensure that they were consistent with reality, and reliance on any extra sources should be avoided as they might not provide genuine and reliable information. The functions and working relationship of the CEACR and the CFA could be examined with a view to clarifying respective roles. ASPAG supported the use of modern technology to simplify the reporting procedure and proposed increasing the number of experts composing the CEACR, with due consideration to geographic representation. ASPAG also supported research on national dispute settlement options preceding recourse to the ILO, as well as technical assistance promoting the ratification and implementation of Conventions. ASPAG looked forward to participating in constructing the future consultation on improving the supervisory mechanism.

53. *A Government representative of India* indicated that his Government aligned itself with the statement made by ASPAG and thanked the authors for their joint report. The supervisory system was an integral feature of the ILO. India supported a more transparent and continuous dialogue between the CEACR, the CAS and the CFA. The procedure for both admission and closure of cases should be developed in order to help countries to prepare their responses.

There was no substantial merit in the proposal to create another independent standing committee, and he reiterated that his Government was not in favour of the establishment of a separate internal tribunal to resolve disputes in interpretation of ILO standards. More details were sought on the proposal for dispute resolution at the national level, which would rationalize the workload of the supervisory system and create better linkages with national practices. The ILO should play the role of a facilitator more than that of a monitor.

54. *A Government representative of Brazil* indicated that his Government aligned itself with the statements by GRULAC and the Government group. While not suggesting that the ILO supervisory system should be permanently reviewed, it was essential to ensure that its institutional framework was clear, predictable, up to date and acceptable to all. The focus should be on rendering the system more meaningful and should respond to the needs of countries and strengthen their capacities to commit to international labour standards.

55. *A Government representative of France*, endorsing the statements of IMEC and the EU, commended the work done and said that his Government wished to participate in discussions aimed at optimizing the production of reports on the application of Conventions with a view to better mobilizing resources where they were most needed, particularly in relation to serious or urgent cases. It was also important to address the issue of the interpretation of standards which had brought the CAS to a standstill on two occasions. At present there was no legitimate instrument for settling differences of interpretation. The difficulty, if not impossibility, of recourse to the International Court of Justice highlighted the need for considering the possibility of recourse to the alternative provided for by article 37(2) of the Constitution to appoint an internal tribunal for the resolution of disputes. The abovementioned discussions, in which France was prepared to participate, should be a means for examining more closely the practical and legal consequences of establishing such a mechanism.

56. *A Government representative of Turkey* indicated that his Government aligned itself with the statements made by the Government group, IMEC and the EU, and thanked the authors for their joint report. Addressing the problems of workers, whether organized or unorganized, was the most important objective of the ILO, and monitoring compliance by member States with international labour standards was relevant to both categories of workers. However, with regard to addressing the interests of the unorganized workers in paragraph 129 of the report, it was not clear how that could be achieved in a supervisory mechanism and how it would enhance its transparency and visibility. Welcoming suggestions to enhance the efficiency of the CAS, the speaker further suggested that initial government statements delivered during the CAS proceedings on its case should be published verbatim in order to allow the CEACR to fully take note of the discussions. In selecting the individual cases before the CAS, the use of criteria of geographical balance and balance between developed and developing countries did not fairly reflect the situation and alternative approaches were necessary in order to achieve a genuine balance. The use of the CAS for purely political allegations arising from the domestic political agenda could harm the credibility of the supervisory mechanisms. Agreeing that systems for filtering out unsubstantiated cases might relieve some pressure on the supervisory system, as was set out in paragraph 142 of the report, the speaker noted that the report did not provide answers to the questions of how to establish a fair threshold for the admissibility of cases before the supervisory bodies. Unsubstantiated allegations should be dismissed and cases which were before national courts should be suspended for the duration of the court proceedings. Establishing a new standing committee for representations under article 24 of the ILO Constitution would only increase the complexity of the supervisory mechanism. Turkey supported the draft decision which envisaged consultations leading to concrete recommendations that avoid overlap and simplify the system.

57. *A Government representative of Spain*, aligning himself with the EU and IMEC statement and indicating that Switzerland and Italy supported his statement, made proposals to explore and define possible improvements to the supervisory system. Longer meetings of the CFA would be necessary so that it could get up to date with its work and meet between Governing Body sessions in order to give guidance to the Office on cases to be examined, discuss recommendations to be adopted and request guidance from the Governing Body on the modification of working methods. Regarding admissibility, a balance needed to be struck between the right of workers and employers to have recourse to the ILO supervisory bodies and respect for national procedures for safeguarding guarantees. If, among other things, there was no judicial independence, if the matter was not considered admissible by national bodies and if judicial provisions were not applied, the CFA should consider the case as serious and urgent. The CFA should show prudence when dealing with matters which were before national judicial bodies or even specific national committees for the settlement of disputes before the ILO. A tripartite facilitation group might be set up to evaluate the direct or indirect admissibility of complaints. Regarding the imbalance in the system resulting from the different degrees of ratification and the possibilities for national partners to submit complaints or representations, three types of measure should be explored: (i) ILO technical cooperation should target areas that received less supervision; (ii) the policy for the promotion of ratifications should consider additional elements that encouraged ratification; and (iii) a proper geographical balance in supervision needed to be achieved. The recommendations of the supervisory bodies should be accompanied by detailed explanations and the meetings on the working methods of the various committees should, at the very least, be partially open to members of the Governing Body. While supporting the draft decision, the speaker asked the Director-General to hold additional consultations on all the issues concerning the supervisory system when the Office was in a position to do so, suggesting November 2016 as a possibility.

58. *A Government representative of Mexico* said that the results of the report confirmed the need to continue analysis in greater depth through a consultation process that would make it possible to make comments and issue specific proposals for improving the supervisory procedures.

59. *A Government representative of the United States* indicated that her Government aligned itself with the statement made by IMEC and thanked the authors for their report, emphasizing that the supervisory system functioned well and effectively served the important functions for which it was created. The United States was willing to participate in consultations to further strengthen its effectiveness, credibility and prestige.

60. *A Government representative of Zimbabwe*, indicating that Zimbabwe aligned itself with the statement of the Africa group, looked forward to an in-depth analysis of measures that could be taken to reduce duplication of procedures among the supervisory bodies and supported the draft decision.

61. *A representative of the Director-General* (Deputy Director-General, Management and Reform) observed that the depth of the comments reflected the complexity of the issue under discussion. While the Office could not provide clarifications sought by some speakers as it was not the author of the report, it would ensure that those issues would be addressed in the further consultations to be undertaken. Those consultations could also include questions about the form of the consultations and the timeframe. It was likely that the earliest that that could be brought back to the Governing Body would be March 2017.

Decision

62. ***The Governing Body:***

(a) received the joint report of the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations and the Chairperson of the Committee on Freedom of Association on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association;

(b) requested the Director-General to undertake further consultations on issues related to the joint report with a view to formulating recommendations for consideration by the Governing Body.

(GB.326/LILS/3/1, paragraph 3.)

The Standards Initiative: Report of the first meeting of the Standards Review Mechanism Tripartite Working Group
(GB.326/LILS/3/2)

63. *The Chairperson of the Standards Review Mechanism Tripartite Working Group (SRM TWG)* introduced the report of the Officers of the SRM TWG. The key objective of the first meeting to develop the future programme of work of the SRM TWG had been achieved one-and-a-half days earlier than expected, which illustrated how constructive and outcome-oriented the discussions had been. The SRM TWG decided: to recommend an initial programme of work reviewing 231 international labour standards organized into 20 thematic sets of instruments grouped by strategic objective; to convene its second meeting from 10 to 14 October 2016, when it would examine the five sets of instruments concerning the unfinished follow-up to the standards identified as outdated by the Working Party on Policy regarding the Revision of Standards (the Cartier Working Party); and to authorize the attendance of eight advisers to assist the Government members; and to refer the maritime instruments to the Special Tripartite Committee (STC) established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006). It was agreed that the remaining sets of instruments would be examined at a later stage to take into account the 2016 evaluation by the Conference of the impact of the ILO Declaration on Social Justice for a Fair Globalization 2008 (the Social Justice Declaration), and its expected impact on the future cycle of recurrent discussions, as well as future General Surveys and tripartite Meetings of Experts. The success of the SRM TWG meeting was due to the constructive approach and positive input of all the members, and in particular the Employer and Worker Vice-Chairpersons.

64. *The Employer spokesperson* stressed the collaborative spirit that had guided the discussions of the SRM TWG, and had allowed proposals to be made in consensus and after constructive discussions. That promising outcome provided a good basis for tackling the challenging work programme ahead. The Employers' group supported the draft decision and looked forward to continuing work jointly with governments and workers in that major initiative.

65. *The Worker spokesperson* indicated that the SRM had the potential to strengthen the constitutional mandate of the ILO to guarantee the protection of workers and their rights at work. It was positive that the first meeting of the SRM TWG had resulted in fruitful discussions carried out in good faith from all sides. The 2015 Joint Statement of the Workers'

and Employers' groups on the ILO Standards Initiative provided the necessary foundation of trust and confidence for the process which would, however, be long, and difficult debates could be expected. The objective of the SRM TWG was not to revise, but to classify, standards, identifying any needs for revision and to address gaps in standards with a view to appropriate follow-up action including the development of new standards. Adjustments to the grouping of instruments by strategic objective might be necessary as work progressed. Classification of standards constitutes recommendations concerning possible follow-up action. The legal validity of standards, and therefore the need to promote their ratification and implementation, should remain unaffected until any decision was taken by the Conference according to the Constitution. The classification used by the Cartier Working Party was a good starting point that could evolve, based on consensus and experience over time. Given that the instruments to be examined in the second meeting of the SRM TWG had already been classified by the Cartier Working Party, their review could be undertaken without an agreement on a final classification system. While their review was unlikely to be greatly impacted by the upcoming evaluation of the impact of the Social Justice Declaration, it was nevertheless of critical importance. The SRM TWG needed to ensure that instruments superseded by new Conventions dealing with the same subject matter were not abrogated until the newer instrument had been ratified by those States which had previously ratified the instrument deemed as outdated. That would involve promotional work. A thorough gap analysis should be carried out in order to assess whether the abrogation of other outdated instruments would lead to gaps in international labour standards.

66. *Speaking on behalf of the Government group*, a Government representative of Ghana expressed support for the draft decision. The initial programme of work of the SRM TWG would make a significant contribution to the overall objective of the SRM to ensure that the ILO has a clear, robust and up-to-date body of international labour standards. Prioritizing the review of instruments identified as outdated following the Cartier Working Party would help ensure that the substantive work started from a constructive and pragmatic foundation. The Government group welcomed the participation of technical expert advisers at the second meeting of the SRM TWG, which would enable a more informed participation and greater inclusion. The referral of all maritime instruments to the STC demonstrated a collaborative and institutionally coherent approach. While an important milestone had been achieved, expectations would continue to be high, and the SRM TWG would be under greater scrutiny once the substantive review of standards commenced.

67. *Speaking on behalf of IMEC*, a Government representative of Canada aligned himself with the statement of the Government group and supported the draft decision. IMEC indicated its pleasure with the positive tripartite spirit and efficiency of the discussions.

68. *Speaking on behalf of the Africa group*, a Government representative of Burkina Faso commended the SRM TWG for the results achieved through its first meeting. The TWG had shown flexibility in constituting thematic sets of instruments while taking account of the need for institutional coherence so that the ILO would have a clear, robust and up-to-date body of international labour standards enabling effective protection of workers' rights and taking account of changes in the world of work and the needs of sustainable enterprises. The Africa group expressed confidence that the forthcoming work would bear fruit and contribute to the Governing Body taking decisions that were geared to the implementation of the ILO standards policy and the strengthening of tripartite consensus on the role of international labour standards in achieving the objectives of the Organization. The Africa group supported the draft decision.

69. *Speaking on behalf of GRULAC*, a Government representative of Mexico emphasized that the first meeting of the SRM TWG had taken place in a constructive spirit, in which dialogue and the search for consensus had predominated. The important work performed by the TWG would make it possible to have a body of standards that addressed the dynamics and the

challenges of the world of work. The review exercise would necessarily be long and complex and should therefore be undertaken in accordance with the principles of transparency and inclusive participation and without any disregard for workers' rights. GRULAC welcomed the fact that Government technical advisers would participate in the second meeting of the TWG, since it would contribute to a better informed debate. It would be beneficial for the information meeting organized by the Office on the first day to be open to all members of the ILO. GRULAC supported the programme proposed by the TWG and encouraged it to continue the search for specific, consensus-based results in relation to the classification of standards. GRULAC supported the draft decision.

70. *Speaking on behalf of the Association of Southeast Asian Nations (ASEAN),* a Government representative of Cambodia aligned himself with the statement of the Government group and supported the draft decision. The participation of eight advisers in the work of the SRM TWG for its second meeting was to be welcomed, taking note of the fact that the Government members in the SRM TWG were not experts on every matter to be reviewed.

71. *Speaking on behalf of ASPAG,* a Government representative of India supported the draft decision. There was a need to simplify, consolidate and align standards to the contemporary world of work. ASPAG expected the SRM TWG to take into account parameters such as the level of ratification when considering the relevance of existing instruments, and it should be ensured that instruments fitted within a coherent policy framework. The SRM process should be conducted with transparency, good faith and flexibility. It required regular evaluation and decisions should be taken by consensus while allowing divergent views. The need for time-bound action was emphasized.

72. *A Government representative of the Islamic Republic of Iran* aligned himself with the statements made by the Government group and ASPAG and supported the draft decision. The SRM process should respond effectively to the requirements of the current world of work. It was crucial to benefit from the experience of previous working groups as well as from information available, including that contained in the General Surveys.

73. *The Employer and Worker spokespersons* stressed that there was great willingness to ensure that the next meeting of the TWG was successful. They reiterated their support for the draft decision.

Decision

74. ***The Governing Body:***

(a) took note of the report of the Officers concerning the first meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG);

(b) approved an initial programme of work for the SRM TWG that reviewed a total of 231 international labour standards organized into 20 thematic sets of instruments grouped by strategic objective;

(c) decided that the SRM TWG would examine sets of instruments 4, 11, 13, 16 and 19 concerning all the unfinished follow-up to the instruments identified as outdated by the Cartier Working Party, in its meeting to take place from 10 to 14 October 2016;

(d) referred the maritime instruments (sets of instruments 18 and 20), to the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), for its expert review and report to the Governing Body; and

(e) convened the second meeting of the SRM TWG from 10 to 14 October 2016.

(GB.326/LILS/3/2, paragraph 6.)

Fourth item on the agenda

Proposed form for reports to be requested under article 19 of the Constitution in 2017 on the instruments on working time (GB.326/LILS/4)

75. *The Employer spokesperson* noted that, in addition to questions concerning the provisions of the relevant instruments, the report form also contained highly relevant questions on "trends and practice", to which each government could determine whether to respond. Adaptations of report forms to obtain relevant information in the context of the follow-up to the Social Justice Declaration should not increase the reporting obligations of member States. Having historically had reservations about General Surveys covering a high number of instruments due to the workload for constituents and the difficulty of undertaking an in-depth analysis, the Employers' group expressed the hope that all governments, as well as employers' and workers' organizations, would send replies to the report form and that the General Survey prepared by the CEACR on that basis would provide meaningful and complete information. That would be particularly important in the context of the SRM TWG review of instruments as the discussion of the General Survey was meant to contribute to the classification of the instruments covered. The Employers' group agreed with the draft decision.

76. *The Worker spokesperson* supported the approach of the proposed report form to include 16 instruments dealing with different aspects of working time, as it improved the effectiveness of the General Survey and was in line with the intention of the Social Justice Declaration to look comprehensively at ILO standards. Emphasizing that beyond providing an overview of law and practice, General Surveys should also add information to the recurrent discussions on trends and practices in relation to a given strategic objective, his group believed that the report form provided an adequate balance. Both elements were needed to provide constituents with up-to-date information on the state of play of ILO working-time standards in a rapidly changing world, and to make evidence-based recommendations on possible standard-setting needs. The General Survey should feed into the Meeting of Experts in 2018, the decisions of which should be submitted to the Governing Body for follow-up action. Recognizing the challenge for constituents in providing exhaustive answers to a comprehensive article 19 report form, the Workers' group supported the draft decision.

77. *Speaking on behalf of the Africa group*, a Government representative of Botswana, observing that the report form was long and complex, requested the Office to ensure that the necessary technical assistance was made available at ILO regional offices to facilitate the provision of the required information by member States. The Africa group supported the draft decision.

Decision

78. ***The Governing Body:***

(a) requested governments to submit reports for 2017, under article 19 of the Constitution, on the working-time instruments listed in paragraph 3 of document GB.326/LILS/4; and

(b) approved the report form concerning these instruments contained in the appendix to document GB.326/LILS/4.

(GB.326/LILS/4, paragraph 6.)

Fifth item on the agenda

Proposed forms for reports to be requested under articles 19(5)(e) and 22 of the Constitution in relation to the Protocol of 2014 to the Forced Labour Convention, 1930
(GB.326/LILS/5)

79. *The Worker spokesperson* welcomed the entry into force of the 2014 Protocol, following its ratification by Mauritania, Niger, Norway and the United Kingdom, and invited governments to ratify the instrument, which was fundamental for the eradication of modern slavery. The Workers' group presented a number of amendments to the draft report forms in order to ensure greater consistency with the provisions of the Protocol. For the article 22 report form, a new question should be inserted, under Article 3: "Please also indicate measures taken to provide other forms of assistance and support." Concerning the article 19 report form, the expression "forced labour" should be replaced by "forced or compulsory labour" in questions 1.1 and 14 to ensure consistency with the text of the Protocol. In question 2.2, the words "targeting especially people in vulnerable situations and employers" should be added after "information, education and awareness raising" as provided for in Article 2 of the Protocol. Similarly, a reference to "recovery and rehabilitation" should be added in question 3.1, as provided for in Article 3 of the Protocol. Furthermore, since the measures listed were inspired by both the Protocol and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Workers' group proposed: a reference to "promotion of freedom of association and collective bargaining to enable at-risk workers to join workers' organizations" and to "basic social security guarantees as part of the national social protection floors" under question 2.3; a reference to "the protection of privacy and identity" and to "appropriate accommodation" under question 3.2; and a reference to "the promotion of freedom of association and collective bargaining to enable at-risk workers to join workers' organizations" under question 9.2. With such changes the Workers' group agreed with the draft decision.

80. *The Employer spokesperson* noted the lack of consultations on the draft report forms, in contrast to the consultations that had taken place on other items. As regards the article 22 report form, the requests for information should follow closely the text of the Protocol. In line with that, regarding Article 1, in the question on paragraph 2, the words "coordination of" should be replaced by the word "systematic". Furthermore, a question requesting information relating to "coordination, if any, with employer and worker organizations" should be added. Concerning the question under Article 2, the term "as well as the organizations involved" could be clarified. The second question under Article 3 asked

governments to describe the measures taken to "provide victims with comprehensive, immediate and long-term protection with a view to their recovery and rehabilitation". The words "comprehensive, immediate and long-term" should be deleted, since they were not explicitly contained in that provision of the Protocol. Finally, since the question under Article 6 did not seem to properly reflect the content of those provisions, it should be replaced by the sentence: "Please describe the manner in which the measures to apply the Protocol and the Convention are determined, in particular to what extent that was done by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned."

81. As regards the article 19 report form, the Employers' group believed that ILO documents relating to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and its website, should make clear that when the fundamental Conventions were listed that the Protocol was in some way included. The Employers' group considered that, since there was only one principle on the elimination of all forms of forced and compulsory labour, there should be only one report form including questions covering the aspects of prevention, victim protection and access to remedies addressed in the Protocol. Furthermore, for each question proposed, the relevant provision of the instrument should be clearly identified. The Employers' group proposed adding a question on the adoption of a national policy and plan of action against trafficking in persons, as provided for under Article 1.3 of the Protocol. In question 3.2, it was not clear to what provision of the Protocol the reference to the "Development of forced labour indicators" related. In addition, question 4.2 referred to the "Provision of a reflection and a recovery period", which was contained only in the Recommendation. Finally, question 4.2 referred to "stricter penalties", while there was no reference to penalties in the Protocol. With those changes, the Employers' group agreed with the draft decision.

82. *Speaking on behalf of the Africa group*, a Government representative of Botswana stated that the Africa group supported the draft decision.

83. *A Government representative of Mexico* stressed the fact that the various requests for information should be consistent with the text of the Protocol where optional aspects of the Protocol were concerned, in particular the questions under Article 1(2) of the Protocol concerning consultations and Article 4 concerning penalties and prosecution in relation to the victims of forced labour. Regarding Article 1(3), the question should form part of the requests made under Article 4, since the activities referred to in Article 1(3) would be described in detail in the replies requested under Article 4. Regarding Article 6, the consultations with the employers' and workers' organizations concerned referred to in the last paragraph of the question related to the application of measures and not to the effective application of national laws, which came solely within the power of the State. In Appendix II [article 19 report form], there was no reference in question 1.3 to consultations with "other groups concerned", as specified by Article 1(2) of the Protocol. With regard to the boxes in question 3.2, it did not seem appropriate to categorize either the beneficiaries of measures or the forced labour practices, since there was no general, consensus-based classification of all forced labour practices. The heading "Development of forced labour indicators" should be transferred to the box in question 4.2 in order to be consistent with Paragraph 13 ("Enforcement") of the Recommendation. Lastly, the reference to "stricter penalties imposed on perpetrators" in question 4.2 did not appear appropriate since Paragraph 13(b) of the Recommendation referred to other penalties such as the confiscation of profits of forced or compulsory labour. In conclusion, the Office should take account of the observations made.

Decision

84. ***The Governing Body:***

(a) requested the Office to ensure that the issues raised during its discussion were adequately reflected in the report forms for the Protocol of 2014 to the Forced Labour Convention, 1930, which would be used as the basis for the preparation of reports due under articles 19(5)(e) and 22 of the ILO Constitution; and, on that basis,

(b) approved the report forms appended to document GB.326/LILS/5.

(GB.326/LILS/5, paragraph 5, as amended according to the Governing Body discussion.)

Sixth item on the agenda

Report of the second meeting of the Special Tripartite Committee established under the Maritime Labour Convention, 2006
(Geneva, 8–10 February 2016)
(GB.326/LILS/6)

85. *The Worker spokesperson* was pleased to note that all matters on the agenda of the second meeting of the STC had been addressed and that a number of amendments to the Code of the MLC, 2006, had been unanimously adopted. Highlighting the importance of the proposed amendment concerning the payment of wages of seafarers held captive on or off the ship as a result of acts such as piracy or armed robbery, the Workers' group was content that a STC working group had been established to examine that issue and prepare proposals, including an amendment to the Code. Recalling the concerns expressed by Government representatives regarding the process of submitting amendments to the Code, he also supported the decision that the working group would recommend improvements to that process.

86. *The Employer spokesperson* stated that the time available for discussion at the second meeting of the STC had been inadequate and suggested that more time be allocated in the future. With reference to point (i) of the resolution concerning the establishment of a working group of the STC, he trusted that the necessary funding would be made available and recalled that the Shipowner members had put on record their understanding that there would be no automatic submission of an amendment regarding the question of payment of wages during captivity of seafarers and that other possibilities could be explored (paragraphs 148 and 150 of the report of the second STC meeting). Concerning the process of preparing proposals for amendments, his group echoed the view of the Government representatives at the STC that a standard protocol for the submission and explanation of potential amendments should be developed, and supported the use of a similar template to that used by the International Maritime Organization (IMO). The Employers' group supported the draft decision in clauses (a), (b), (c) and (e) of paragraph 17 and could also agree with clause (d) on the understanding that the working group would not necessarily have to prepare proposals for an amendment to the Code of the MLC, 2006, but could also come up with proposals for alternative action.

87. *Speaking on behalf of ASPAG*, a Government representative of Japan supported the draft amendments to the MLC, 2006, in particular the amendment to allow an extension of the validity of maritime labour certificates, which aimed to address the problem faced by ships that could not immediately carry new certificates after renewal inspections had been completed. However, ASPAG wished to draw attention to the issue of timing for the entry into force of that amendment. According to Article XV of the MLC, 2006, following the notification by the Director-General to ratifying Members of amendments approved by the Conference the period for the communication of any formal disagreement would be of two years unless the Conference set a different period. Most certificates carried by ships of ratifying Members worldwide had been issued in July–August 2013, just before the Convention had entered into force, and they would expire and be renewed in July–August 2018. If the period for communication of disagreement were to remain at two years, the amendment would only become effective around January 2019 and thus fail to benefit many ships. To avoid such a situation, ASPAG submitted an amendment to the draft decision suggesting that the Governing Body recommended to the Conference to decide, when approving the amendments, that the period for communication of disagreement should be 14 months.

88. *Speaking on behalf of the Africa group*, a Government representative of Burkina Faso supported the proposals for amendments to the Code relating to Regulations 4.3 and 5.1 of the MLC, 2006. Regarding the proposed amendment to Regulation 2.2, the Africa group was in favour of setting up a working group of the STC and suggested that it could also outline new proposals aimed at better implementation of the MLC, 2006. The Office should take all possible steps to mobilize the necessary financial resources to enable the working group to complete its mission. The Africa group supported the draft decision as amended by ASPAG.

89. *Speaking on behalf of the EU and its Member States*, a Government representative of the Netherlands noted that the following countries aligned themselves with the statement: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Albania, Norway and Georgia. He welcomed the proposed amendments relating to the renewal of the maritime labour certificate which would facilitate the implementation of the Convention in practice. The draft amendments concerning harassment and bullying on board ships gave prominence to an issue supported by the EU as demonstrated by the 2013 *Guidelines to shipping companies on eliminating workplace harassment and bullying* adopted by the European maritime social partners, which formed the basis of the international guidelines referred to in the amendments. He was pleased that the STC working group would address the serious issue of wages for seafarers taken captive as well as the process for the submission of new amendments, including possible improvements to better anticipate such submissions and offer more time for preparation.

90. *A Government representative of China* indicated that his Government had ratified the MLC, 2006, on 12 November 2015 and was in the process of refining and modifying legislation and institutional arrangements to implement it. He trusted that the ILO would continue providing technical assistance to China in that respect and signalled his Government's readiness to share experiences. While the protection of seafarers' wages when the seafarer was held captive was, in principle, acceptable to China, the working group should take into account all views expressed during the STC and the Office should keep the parties informed. He supported the draft decision as amended by ASPAG and, more generally, expressed the hope that efforts would be made in the future to avoid scheduling important meetings during the Chinese New Year.

91. *The Worker spokesperson* stated that the Workers' group could accept the ASPAG amendment as long as the same timeframe was applied also to the amendment related to Regulation 4.3, as it would cause difficulties to have different dates of entry into force for amendments adopted by the STC at the same time. A subamendment was submitted to that effect.

92. *The Employer spokesperson*, while expressing support for the initial ASPAG amendment, stated that his group was not in a position to accept the subamendment proposed by the Workers' group to treat the two amendments adopted by the STC as a package, since the International Chamber of Shipping (ICS) had not been able to undertake the necessary consultations.

93. *Speaking on behalf of ASPAG*, the Government representative of Japan did not insist upon the amendment, expressing the hope that the current discussion would lead to further developments by the time of the Conference so that a proposal could be tabled then to address the issue.

Decision

94. ***The Governing Body:***

(a) took note of the information provided in the report (document GB.326/LILS/6);

(b) decided to transmit to the 105th Session of the International Labour Conference (June 2016) for approval the amendments to the Code of the Maritime Labour Convention, 2006, adopted by the Special Tripartite Committee, as contained in Appendix I to document GB.326/LILS/6;

(c) appointed Ms Julie Carlton (United Kingdom) as the Chairperson of the Special Tripartite Committee for a three-year term (2016–19);

(d) endorsed the establishment of the working group of the Special Tripartite Committee and approved that the cost of the meeting of the working group, estimated at US$103,100, be financed in the first instance from savings in Part I of the budget or, failing that, through Part II, on the understanding that, should this subsequently prove impossible, the Director-General would propose alternative methods of financing at a later stage in the 2016–17 biennial;

(e) decided to convene the third meeting of the Special Tripartite Committee in 2018, and requested the Director-General to include a provision for that purpose in the Programme and Budget proposals for 2018–19.

(GB.326/LILS/6, paragraph 17.)

Seventh item on the agenda

Report of the meeting of the Ad hoc Tripartite Maritime Committee for the amendment of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

(Geneva, 10–12 February 2016)
(GB.326/LILS/7)

95. *The Worker spokesperson* welcomed the adoption of the proposed amendments to Convention No. 185 which would make the Convention workable given that the previous technology standards had been rendered obsolete. The key to securing the aims of the Convention rested on port States accepting the documents issued by the flag State and facilitating access to shore leave and transit to and from the ship. The implementation of the revised Convention would involve costs to the flag States, especially if the International Civil Aviation Organization (ICAO) Public Key Directory was used for the verification of the new seafarers' identity documents (SID) at points of entry. The Workers' group agreed with the draft decision expecting that port States would ratify the revised Convention and that the Office would actively promote it.

96. *The Employer spokesperson* noted that the proposed amendments were meant to keep the technical standards of the Convention relevant to the maritime world of work. The Employers' group agreed with the draft decision.

97. *Speaking on behalf of the Africa group*, a Government representative of Angola stressed that because of different levels of technological development, technical cooperation measures should be contemplated to facilitate implementation of the amendments to Annexes I, II and III to Convention No. 185 by the countries concerned. The group supported the draft decision.

98. *Speaking on behalf of IMEC*, a Government representative of France supported the two resolutions and the proposed amendments to Annexes I, II and III of Convention No. 185, which were based on a technical approach for global interoperability of the Convention, in line with the evolution of technology and compatible with other international norms, such as ICAO 9303. It was hoped that those new provisions offered a new opportunity for an operational and modern SID and would trigger a new momentum in terms of ratifications of the Convention. An evaluation of the effects of those amendments in due course would be appreciated.

99. *Speaking on behalf of the EU and its Member States*, a Government representative of the Netherlands said that the following countries aligned themselves with the statement: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Albania, and Georgia. He welcomed the proposed amendments aligning the SID to ICAO 9303 by introducing a contactless chip with a stored facial image, which would eventually render it globally interoperable and compatible with standard readers available at borders for the reading of e-passports. He supported both resolutions fully understanding the need for a transition period. Continued difficulties for seafarers to enjoy shore leave and to transit to and from ships required swift and appropriate solutions.

Decision

100. ***The Governing Body:***

(a) requested the Director-General to remain seized of the issue of the facilitation of access to shore leave and transit of seafarers;

(b) decided to transmit the proposed amendments and the resolutions adopted by the Ad Hoc Tripartite Maritime Committee to the International Labour Conference at its 105th Session (June 2016).

(GB.326/LILS/7, paragraph 7.)