



## Governing Body

332nd Session, Geneva, 8–22 March 2018

GB.332/LILS/PV

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Legal Issues and International Labour Standards Section

LILS

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MINUTES

## Legal Issues and International Labour Standards Section

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## 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.332/LILS/1)

1. *The Worker spokesperson* said that freedom of opinion and expression were key to meaningful social dialogue. Tripartism was the very essence of the ILO and could only be effective and meaningful if Worker and Employer representatives taking part in ILO meetings were able to carry out their functions freely and independently and were granted effective protection against possible retaliatory actions.
2. The Workers' group supported the immunities proposed in the document, as well as their proposed scope in terms of persons covered. Immunity from arrest or detention and exemption from restrictions on free movement were necessary in order to address the situation where Employer or Worker representatives were prevented from discharging their ILO mandate by being arbitrarily arrested or detained, or prevented from attending sessions of the International Labour Conference (ILC), the Governing Body or a Regional Meeting for example, because of the lack of availability of a valid passport or permission to leave the country. These immunities would also protect them against retaliatory arrest or administrative detention upon their return. She concurred that immunity from personal arrest or detention would not apply if the person concerned were found in the act of committing an offence.
3. However, the limitation on immunity from legal process in respect of opinions expressed orally or in writing applying to statements and acts performed at the meeting but not to statements made outside of the meeting premises or to the media was inconsistent with the preamble to the draft resolution set out in Appendix I. In line with the 1970 Conference resolution concerning freedom of speech of non-governmental delegates to ILO meetings, immunity from legal process should extend to words spoken or written and acts performed related to the function of Employer and Worker representatives at ILO meetings, both inside and outside the meeting, including to the press and on social media, and subsequent to the meeting. She therefore requested that the words "at meetings" be removed from proposed paragraph 1bis(i)(a) of the revised annex contained in the draft resolution.
4. With reference to Appendix II, she asked whether the proposals on possible elements of a procedure for waiving immunity satisfied the group of industrialized market economy countries (IMEC), noting that such a procedure would apply only in rare cases. Delegates and advisers to Regional Meetings and advisers to the Conference were not mentioned in paragraph 1 and that omission should be corrected. She asked the Office to clarify the meaning of "diplomatic communication" in paragraph 3 and agreed that requests for waiver could be examined in a private sitting in the INS Section of the Governing Body, as described in paragraph 7. The matter of requests for waiver in relation to Conference delegates, described in paragraph 8, could be referred to the Credentials Committee rather than the

Selection Committee. The Workers' group supported the draft resolution, with the deletion of the words "at meetings" from paragraph 1bis(i)(a).

5. *The Employer spokesperson* said that the revised draft resolution was a significant improvement on the previous version from November 2016 and he hoped that it would be approved by the Workers and the Governments. The strengthening and protection of tripartite social democracy and the individual and collective liberties of Conference delegates and Governing Body members in the performance of their functions were of vital importance. He expressed satisfaction with the legal and regulatory framework for waiving immunity. The Employers hoped that the resolution would be approved and, subsequently, adopted at the Conference and widely accepted by ILO member States. Until its adoption, the Credentials Committee and the Committee on Freedom of Association remained important avenues of recourse for the protection of Employer and Worker representatives in respect of their home countries. The Employers approved the draft decision.
6. *Speaking on behalf of the Government group*, a Government representative of the Republic of Korea said that Workers' and Employers' delegates to ILO meetings should be able to express themselves freely and act independently of their governments without fear of reprisals. When the previous draft resolution had not been approved, his group had anticipated that the Office would initiate consultations to find a joint solution and was surprised to be presented with such a broad and controversial draft resolution. The group had not had sufficient time to discuss the issue of immunity from personal arrest or detention at the national level and so was not in a position to respond to the proposal. It did not support the draft decision and proposed an amendment to read:

The Governing Body:

- (a) postpones the item to the 334th Session of the Governing Body; and
  - (b) requests the Office to provide a draft document on the subject by September 2018 followed by a consultation process including informal tripartite consultation in order to find a viable approach.
7. *Speaking on behalf of IMEC*, a Government representative of Canada supported the statement of the Government group. Although IMEC had supported the Office's previous proposal, it recognized that the proposal had been problematic for the Government group and insufficient for the social partners. Informal tripartite consultations on an early draft would be conducive to finding a common approach that could be widely endorsed by Governments and subsequently implemented. IMEC supported the draft decision, as amended. If the Governing Body agreed to amend Appendix I, the proposal should be treated similarly to draft ILO instruments and submitted to all member States well in advance of the Conference, and it might be advisable to adopt the corresponding resolution by vote. His group noted that the Office had responded to its previous comments with regard to waiving immunity for persons found in the act of committing an offence and appreciated the more detailed explanations on the procedure for waiving immunity, which required further exploration and detailed review.
  8. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that the independence, transparency and stability of the ILO's main deliberative and executive organs were guaranteed by protecting the immunity of Workers' and Employers' delegates. She reiterated the concerns expressed by her group at the 326th Session of the Governing Body. Authority under the 1947 Convention to grant and waive the immunity of Workers' and Employers' delegates to the Conference and Governing Body members should not override the jurisdiction of a sovereign State. The Governing Body and the Conference should reserve the right to lift the immunities under section 16 of the 1947 Convention in cases where not doing so would amount to a clear injustice. She supported the amendment to the draft decision proposed by the Government group.

9. *The Worker spokesperson* said that the issue affected delegates in the fulfilment of their mandate as Employer or Worker representatives. The need for further consultation between government ministries had been raised in November 2016 but those consultations had not yet taken place. As all present had affirmed the importance of protecting delegates and tripartism, she asked why they were not yet in a position to address the issue.
10. *The Employer spokesperson* invited the Government group to examine whether it really wanted to progress and protect social democracy. Since the proposed immunity would be protected within the ILO's legal and regulatory framework and abuses would be sanctioned, the group's apprehensions were difficult to comprehend. It was time to conclude the discussion.
11. *A representative of the Director-General (Legal Adviser)*, replying to the question from the Workers' group, said that "diplomatic communications" and "ordinary diplomatic channels" in paragraph 3 of Appendix II referred to the fact that the Office communicated with the authorities of member States through those States' permanent missions to assert immunities and could not receive requests to lift immunity directly from national courts and tribunals. Regarding IMEC's suggestion for the draft resolution to be communicated to all member States as early as possible, he presumed that the ordinary procedure would be followed, meaning that the document would be posted online immediately after its adoption by the Governing Body. With respect to the vote proposed by IMEC, article 19, paragraph 6, of the Standing Orders of the Conference provided that a record vote could be requested either by the chairperson of a group or at least 90 delegates.
12. *The Worker spokesperson* proposed that a consultation should take place between the Office and the Government group on the modalities of solving the problem, followed by tripartite consultation. The draft decision could be amended to clarify that the item was being postponed to the 334th Session of the Governing Body with a view to the submission of a draft resolution to the following session of the Conference, which would finalize the debate and provide the necessary protection.
13. *Speaking on behalf of the Government group*, a Government representative of the Republic of Korea said that he was not in a position to agree to the proposed amendment as the Governments needed more time to consult within their group and with their ministries. He proposed that the draft decision should be further amended to read as follows:

The Governing Body:

  - (a) postpones the item to the 334th Session of the Governing Body with a view to submission of a draft resolution to the following session of the International Labour Conference;
  - (b) requests the Office to provide a draft document on the subject as soon as possible and no later than April 2018, followed by a consultation process including informal tripartite consultations in order to find a viable approach.
14. *The Worker spokesperson* welcomed the support of the Government group for subparagraph (a) as amended by the Workers and said she had no objection to subparagraph (b). With *the Employer spokesperson*, she acknowledged the Government group's wish to progress on the issue and asked what kind of document it required from the Office.
15. *Speaking on behalf of the Government group*, a Government representative of the United States said that the document requested in subparagraph (b) was the resolution or other solution proposed by the Office for consideration and adoption at the 334th Session of the Governing Body with a view to its consideration at the 108th Session of the Conference in 2019. Early consideration of the proposal would allow Governments the necessary time to consult with their relevant ministries and take part in tripartite consultations.

16. *A representative of the Director-General (Legal Adviser)* said that consultations could begin at the earliest opportunity if the Government group was ready to do so on the basis of the present document. The agenda item had been reviewed and deferred on three previous occasions in order to enable Governments to undertake internal consultations on the issue. The Office had requested feedback from Governments in advance of the current Governing Body session, but none had been forthcoming and the group had not proposed any changes to the document.
17. *Speaking on behalf of the Government group*, a Government representative of the United States said that if the ILO wished to table the current document as a starting point for consultations, the Government group would not require any further documents. The group had not had sufficient time since the publication of the document to conduct internal consultations and provide feedback.
18. *The Worker spokesperson* said that there had been tripartite agreement that consultations should begin promptly and no later than April. Subparagraph (b) of the tabled amendment should be updated to reflect that agreement, taking into account that the current document required further consideration and an initial round of consultations between the Government group and the Office was envisaged. A resolution for the November session of the Governing Body could only be drafted following further consultations.
19. *Speaking on behalf of the Government group*, a Government representative of the United States noted that the term “consultation” was used to refer both to internal government consultations at the country level and to tripartite consultations. She asked the ILO to provide a proposal for use in internal government consultations at the country level; Governments could then provide feedback to the Office by April, with a view to achieving the support of all Governments and tripartite consensus on any potential changes proposed.
20. *Speaking on behalf of the Government group*, a Government representative of the Republic of Korea said that, on the basis of the discussion, the Government group upheld its original amendment.
21. *The Worker spokesperson* asked the Government group to clarify whether it would like the Office to produce a new document or wished to begin consultations as soon as possible, including informal tripartite consultations, on the basis of the current document.
22. *Speaking on behalf of the Government group*, a Government representative of the United States asked the Office to clarify whether the current document represented a starting point for consultations or whether it would amend the document in the light of feedback received, in particular from the Workers’ group.
23. *The Worker spokesperson* said that the amendment proposed by her group had not been adopted yet. She asked the Office to provide a copy of the minutes to all parties to consultations so that the Government group could consider the amendment proposed by the Workers’ group in their internal consultations without requesting further documents from the Office.
24. *The Employer spokesperson* said that it was important to ascertain whether the Government group was clear on the document and agreed with its proposals before going further. The social partners had commented on the proposal. The document was sufficiently precise and consensus needed to be reached on the matter.
25. *Speaking on behalf of IMEC*, a Government representative of Canada said that Governments were unclear on certain aspects of the document given the short time frame provided for constituents to study it since its publication. There were sensitive legal issues to explore and

it was possible that several rounds of consultations would be needed at the country level. Governments would require a final document well before the meeting in November to be in a position to make a decision as various ministries needed to be able to provide input.

26. *The Worker spokesperson* reiterated her request for clarification from the Government group on whether it would like to begin consultations on the basis of the current document or whether the Office should provide another document.
27. *Speaking on behalf of IMEC*, a Government representative of Canada, submitted a subamendment on behalf of the Government group, modifying the amended draft decision to read:
- (a) postpones the item to the 334th Session of the Governing Body, with a view to the submission of a draft resolution to the following session of the International Labour Conference, taking into account the limited time made available for a comprehensive analysis of the document;
  - (b) requests the Office to recirculate the document to member States by the end of the Governing Body and schedule a consultation process including informal tripartite consultations in order to find a viable approach.
28. *The Worker spokesperson* inquired whether the phrase “taking into account the limited time available for comprehensive analysis of the document” in subparagraph (a) was meant to ensure that there was sufficient time for consultation in the future or was merely an acknowledgement that there had not been sufficient time in the past. The phrase should be moved to the beginning of the sentence, and the document should be referred to by its official number to avoid confusion. With those changes, her group could support the draft decision.
29. *The Employer spokesperson* said that his group accepted the proposed modifications to the amendment but noted that it remained unclear what the Governments objected to in the document.
30. *Speaking on behalf of the Government group*, a Government representative of the Republic of Korea said that the phrase beginning “taking into account” was intended to ensure that there would be sufficient time for his group to conduct internal consultations going forward.
31. *Speaking on behalf of IMEC*, a Government representative of Canada, in response to the Employers’ query, said that the Government group did not object to the document as such, but required more time to send it to ministries and hold consultations both internally and in Geneva. Governments also needed a formal request to send to their ministries. That was why the group had requested that the document should be recirculated.

## Decision

### 32. *The Governing Body:*

- (a) *taking into account the limited time made available for comprehensive analysis of document GB.332/LILS/1, postponed the item to its 334th Session (October–November 2018) with a view to the submission of a draft resolution to the following session of the International Labour Conference;*

- (b) requested the Office to recirculate the document GB.332/LILS/1 to member States by the end of the 332nd Session and schedule a consultation process including informal tripartite consultations in order to find a viable approach.***

(GB.332/LILS/1, paragraph 11, as amended by the Governing Body.)

## **Second item on the agenda**

### **Composition of the International Labour Conference: Proportion of women and men in delegations ([GB.332/LILS/2](#))**

33. *The Worker spokesperson* said that since 1919, when the Constitution of the ILO was first drafted, it was expected that women would play on a footing of complete equality with men. Several Conference resolutions had reinforced the need to secure enhanced participation by women at all meetings of the ILO, including the Conference and Regional Meetings. Such participation was a basic requirement in accordance with UN and ILO principles and was in line with article 21 of the Universal Declaration of Human Rights. However, progress towards the goal of equal participation in the Organization and throughout the entire UN system had been slow. The persistent lack of gender parity in delegations was detrimental to inclusive social dialogue and, in the Organization, to its credibility. She acknowledged that her group had the lowest percentage of women's participation at the International Labour Conference, with women making up an average of less than 24 per cent of delegates as compared with just over 25 per cent for Employers and more than 35 per cent for Governments. Since greater efforts were clearly needed to achieve gender parity, the Workers and the Bureau for Workers' Activities (ACTRAV) had continued, in their communications with national centres, to apply pressure at the country level to redress the situation ahead of the next Conference. Real and renewed political commitment from governments and from employers' and workers' organizations was needed to ensure that women were better represented at the Conference and Regional Meetings. In terms of making progress, she welcomed the Director-General's letter to those delegations who did not achieve the 30 per cent women's participation rate. Replies pointed at three main obstacles, namely, the low ratio of women in national level management and specialist positions; the structural barriers to women's equality and empowerment in the world of work; and financial constraints. The obstacles cited by member States were unsurprising: the lack of gender parity at the ILO reflected widespread and ingrained gender-based discrimination and stereotypes in society and the world of work. High-level progress would need to go hand-in-hand with strong tripartite commitment at the country level to promote gender equality and address discrimination. Information on women's level of participation should be more widely publicized, along with guidance and practical measures to improve it. The Office should hold information sessions at every Conference and Regional Meeting to present the figures and encourage a tripartite exchange of views and strategies to achieve gender parity across the three groups. The Credentials Committee should continue to include detailed information about the proportion of women accredited in Conference delegations, along with sex-disaggregated statistics by member States and by tripartite groups. Doing so would enable each group to monitor the situation and take action. Her group was fully committed to gender equality and would continue to impress the importance of the issue upon workers' organizations. Achieving gender parity among delegations at the centenary Conference would enable ILO constituents to show their commitment to the Women at Work Initiative, an opportunity that should not be missed. Her group therefore supported the draft decision.

34. *The Employer spokesperson* said that significant progress in women's representation at the Conference was discernible if one took a long-term perspective and compared the figures with earlier years, which the Office's report failed to do. In 2015, the overall proportion of women at the Conference had reached the 1995 target of 30 per cent. Progress had been insufficient, however, as social partners had not yet met the 30 per cent target. While the data presented in the report were valuable, the graphs on Regional Meetings were unclear and did not take contextual differences between regions into account or provide a breakdown of female Conference participants by region. The responsibility for attaining gender parity in delegations lay with governments and social partners; if there was a dearth of female employees to choose from in countries, that reflected a systemic gender imbalance that should be addressed. That point had been identified as the main obstacle by member States that had not reached the 30 per cent minimum target in their responses to the Director-General's circular. According to their replies, the low ratio of women in national level management and structural barriers to women's equality and empowerment in the world of work were the major obstacles they face when selecting delegation members. Employers faced the same challenges as member States in that regard. For that reason, her group considered IMEC's proposed amendment increasing the target to 50 per cent representation at the Conference and Regional Meetings to be commendable, but impractical. Priority should be given to increasing current efforts, not to setting new targets, and constituents should focus on expanding their pools of competent representatives, male and female. Not all groups had yet achieved the 30 per cent target; parity remained the long-term goal. Moreover, gender equality was not merely a matter of numbers; it was also about transforming the institutional culture and capitalizing on the ILO's full potential. With regard to the Office-piloted workshops on good practices for member States that had not reached the target, she expressed major concern over the inclusion of "temporary quotas for women's participation in Parliament and for political parties" in the list of good practices. The Office should not impose quotas or binding rules, even for temporary periods. The choice of delegations for the Conference and Regional Meetings belonged exclusively to governments and social partners and should remain so. For that reason, her group could only accept subparagraph (c) of the amended draft decision proposed by IMEC if the wording were changed to "request that the Director-General's report list delegations that meet the minimum target of 30 per cent women's participation": countries should be rewarded for making efforts to reach the target, not penalized for failing to do so. That would be without affecting the report made by the Credentials Committee and the other statistics that the Office compiled on the Conference. Her group supported the areas for continued action by the Office as identified during the workshops and listed in paragraph 20 of the document; however, valuable as the workshops were, there was no reason to mention them in the draft decision set out in subparagraph (d) of the IMEC proposal since they were merely one of many important avenues that the Office should pursue. The Women at Work Initiative would afford an opportunity for the Office to expand its action by encouraging the specific measures taken by governments and by employers' and workers' organizations. Her group supported the original draft decision proposed by the Office.
35. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of Saudi Arabia recalled the resolutions adopted by the Conference in 1975, 1981, 1991 and 2009 addressing the participation of women in the Conference, as well as the target set by the UN in 1990 for a minimum of 30 per cent women in decision- and policy-making bodies, with the aim of achieving parity. In the annex to its resolution 1990/15, the UN Economic and Social Council (ECOSOC) requested governments, political parties, trade unions, professional and other representative groups to "aim at targets to increase the proportion of women in leadership positions to at least 30 per cent by 1995, with a view to achieving equal representation between women and men by the year 2000". Despite those frequent appeals, the overall proportion of women in Conference delegations had only reached the 1995 short-term minimum target of 30 per cent by 2015, and even that minimum target remained to be met by either one of the social partners. ASPAG encouraged the Office to inquire about



any action taken by constituents to send gender-balanced delegations to the Conference and other ILO meetings, in addition to the obstacles encountered. His group urged all constituents to increase the participation of women in their groups and requested the Office to continue its efforts in that regard, to develop further measures to meet gender parity targets and to report on those measures and results periodically.

- 36.** *Speaking on behalf of IMEC*, a Government representative of Australia noted that in its 1990 resolution, ECOSOC had set a target of achieving equal representation by 2000. It was unacceptable that by 2018 the minimum target of 30 per cent women in delegations to the Conference and Regional Meetings had barely been achieved and was woefully short of gender parity. In 2018, the aim should be parity and nothing less than parity: IMEC therefore proposed raising the target to 50 per cent. Achieving gender balance in delegations was something that affected everyone. The failure to reach gender parity had serious negative consequences, both socially and economically. It compromised the credibility of social dialogue taking place within the ILO and presented a risk to its reputation. Although IMEC acknowledged that improvement was needed from governments, it noted with concern that the number of women in social partner delegations was consistently low and remained below the minimum 30 per cent requirement. In that regard, she noted that Governments could not influence the composition of social partners' delegations and encouraged social partners as well as governments to redouble efforts to achieve gender equality in delegations. Her group appreciated initiatives by the Office to identify and conduct research on the obstacles to equal gender participation in tripartite delegations. However, real improvements would require all groups to urgently pursue meaningful, holistic gender equality strategies at the national level in order to overcome the perpetual and well-known obstacles that continued to impact women's advancement. Resources should be better allocated to helping delegations with inadequate levels of female participation to improve, and there should be greater accountability for those not meeting the minimum target. IMEC proposed a number of amendments to the draft decision, including the introduction of subparagraphs (c) and (d), as follows:

The Governing Body:

- (a) strongly urges all groups to increase the number of women in their delegations to 50 per cent, accredited as delegates and advisers;
  - (b) requests the Director-General to continue to bring the issue to the attention of Members and groups, after every International Labour Conference as well as Regional Meetings, that have not reached the goal of gender parity, and to periodically report to the Governing Body on obstacles and measures taken by tripartite constituents to achieve parity;
  - (c) requests that the Director-General's report list delegations that consistently miss the long-standing minimum target of 30 per cent women's participation; and
  - (d) requests the Office to continue hosting workshops for all groups, including social partners and those outside Geneva, who may need assistance to reach gender parity in delegations.
- 37.** *Speaking on behalf of the Africa group*, a Government representative of Lesotho welcomed the updated information regarding the proportion of women and men to the Conference and Regional Meetings. The participation of women had always been an essential aspect of the ILO since its inception in 1919, ensuring that women engaged on an equal footing with men. The ILO Constitution allowed for the inclusion of at least one woman adviser when issues affecting women were discussed at the Conference. The participation of women was the focus of a number of resolutions, not only at the Conference, but also at Regional Meetings, international and national meetings convened by the ILO. Despite UN and ECOSOC resolutions promoting gender balance in delegations to UN international meetings and conferences, member States which had not attained the minimum target cited reasons such as financial constraints and the low ratio of women in national-level management and specialist positions in Conference-related themes. She applauded the Office for its responses to those issues and encouraged it to continue. The participation of women representing the

social partners at the Conference had not yet reached the minimum target, although there had been a notable improvement at the regional level. The Office should continue to collect relevant information and to encourage and assist tripartite constituents to implement specific measures to achieve gender parity in delegations to ILO meetings. She urged member States to encourage the social partners to recognize women in their organizations, in order to fulfil the intent of the ILO Constitution as well as the ECOSOC and UN resolutions. While not opposed to the IMEC proposal to increase the target threshold to 50 per cent, her group considered it wise to achieve the 30 per cent threshold first. Taking those observations into account, the Africa group supported the draft decision.

38. *A Government representative of India* said that women's participation in its meetings had been an important goal of the ILO since its inception and her country was committed to achieving gender parity at all meetings convened by the ILO. The percentage of women in the Indian delegation at the Conference had consistently increased due to continued efforts to encourage the social partners to ensure sufficient representation of women in their respective groups. She requested the ILO to take up the matter directly with social partners, as governments did not have any jurisdiction over the choice of individual delegates made by the social partners. All ILO constituents should take specific measures aimed at attaining gender balance in delegations; the ILO goal of decent work for all would not be achieved without equal participation by women. Proactive reforms were needed to make the ILO more sensitive to issues of gender equality, not only in words but also in practice. The ILO should study the obstacles encountered by those social partners that had not reached the 30 per cent target and take measures to advise them and achieve gender parity at all levels. India supported the draft decision.
39. *The Worker spokesperson* welcomed IMEC's proposed amendment to subparagraph (a) which urged delegates to raise their sights from 30 per cent to 50 per cent representation. That proposal was entirely appropriate in view of the slow progress towards the target and the views expressed in the current debate. The proposal was not for a quota but reflected an expectation that there would be more action to achieve parity. Noting that expectations did not always lead to results, she also welcomed the additions in subparagraphs (b), (c) and (d) while acknowledging that the underlying structural barriers facing women would require broader action at the national level.
40. *The Employer spokesperson* supported the ASPAG proposal to strengthen gender parity at the national level, since the promotion of gender equality needed to take account of national circumstances. Her group supported the Office's original draft decision.
41. *Speaking on behalf of IMEC*, a Government representative of Australia noted the statements by other groups and governments, including the Africa group's comments on the 50 per cent target in the proposed amendment to subparagraph (a). In that regard she confirmed that the 50 per cent figure was purely aspirational, being neither a quota nor a target. IMEC preferred to maintain the proposed amendment and had heard consensus for it in the discussion. Proposed new subparagraph (c) could be amended to "consistently meet" rather than "consistently miss", as suggested by the Employers' group.
42. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that her group did not feel as strongly as the Employers about amendments to subparagraphs (c) and (d). However, she insisted that the 30 per cent target should first be achieved before moving to 50 per cent.
43. *The Employer spokesperson* said that it was too early to propose 50 per cent, as mentioned in the amendment to subparagraph (a), as a goal.

44. *The Worker spokesperson* said that her group preferred to keep the amended wording “50 per cent” in subparagraph (a). All three groups had recognized that 30 per cent was a short-term target and that 50 per cent was the longer-term goal.
45. *Speaking on behalf of IMEC*, a Government representative of Australia agreed to the Africa group’s request to retain in subparagraph (b) the words “that have not reached the minimum target of 30 per cent of women’s participation”. She asked whether the Employers’ group would accept adding the words “to aspire to 50 per cent” in subparagraph (a), so emphasizing that the figure of 50 per cent was aspirational rather than a target or binding quota.
46. *The Employer spokesperson* stated that the draft decision would achieve the target of 30 per cent. The draft decision contained in the document already mentioned gender parity, therefore it was not necessary to include the words “50 per cent” in subparagraph (a).
47. *Speaking on behalf of IMEC*, a Government representative of Australia agreed that the concept of increasing the participation of women in ILO meetings was already present in the draft decision. However, the current focus was on 30 per cent whereas it should be on gender parity, which was closer to 50 per cent.
48. *The Employer spokesperson* proposed that subparagraph (a) of the draft decision should be amended to read: “urges all groups to aspire to achieving gender parity in their delegations to the Conference and Regional Meetings”.
49. *Speaking on behalf of IMEC*, a Government representative of Australia said that parity meant 50 per cent. Including the specific figure would focus minds on that target. The participants in the room were all in favour of reaching gender parity and agreed that more must be done. Given that subparagraph (b) set the minimum target of 30 per cent, IMEC was in favour of using subparagraph (a) to strongly urge all groups to aspire to 50 per cent.
50. *Speaking on behalf of the Africa group*, a Government representative of Lesotho agreed that all groups aspired to reach gender parity. However, her group would prefer to maintain the previously agreed reference to 30 per cent and refrain from introducing a reference to 50 per cent. Attendance at meetings was based not only on gender but also on the positions that delegates held in their various organizations.
51. *The Worker spokesperson* emphasized that “gender parity” clearly meant 50 per cent. Although she would prefer that figure to be specified, she would accept the term “gender parity” to facilitate consensus.
52. *Speaking on behalf of IMEC*, a Government representative of Australia concurred that the omission of the words “50 per cent” was less than ideal as it would shift the focus from achieving parity to achieving 30 per cent participation by women. Moreover, it was important to IMEC to keep the words “as delegates and advisers”. Accrediting men as titular members of the Conference was clearly not the same as granting women a subordinate role as advisers for the statistics.
53. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that she could accept the reference to 50 per cent in subparagraph (a) as long as it in no way contradicted the 30 per cent target to be maintained in subparagraph (b).
54. *The Employer spokesperson* asked the Legal Adviser to explain whether the definition of “delegation” included a reference to advisers.
55. *A representative of the Director-General (Legal Adviser)* said that, according to the ILO Constitution, a Conference delegation comprised two representatives of its Government, one

representative of the Workers and one representative of the Employers. Typically, it would also comprise advisers, some of whom could also be substitute delegates. In practice however, Conference delegations comprised many more individuals. Regarding subparagraph (a) he observed that its original wording urging “Governments, employers’ and workers’ organizations” to achieve gender parity in the delegations was more accurate.

56. *An Employer member from Australia* said that his group had sought clarification on whether “delegation” had a prescribed meaning that would make the last amendment proposed by IMEC redundant.
57. *A representative of the Director-General (Legal Adviser)* replied that “delegation” traditionally meant the titular delegates and advisers that each group accredited to the Conference.
58. *Speaking on behalf of IMEC*, a Government representative of Australia, referring to article 3 of the ILO Constitution, concurred that a delegation technically comprised two delegates of the Government and two others who represented, respectively, the Employers and the Workers. However, she still saw a need to insist upon the words “delegates and advisers”. Article 3, paragraph 2, of the ILO Constitution specified that each delegate could be accompanied by advisers, who were, ipso facto, subordinate to the delegates.
59. *The Employer spokesperson* proposed the wording “delegates, advisers and observers”, which would include observers to the International Labour Conference and Regional Meetings.
60. *Speaking on behalf of IMEC*, a Government representative of Australia said that IMEC agreed to that proposal.
61. *The Worker spokesperson* expressed satisfaction with the latest wording proposed.
62. *The Employer spokesperson* thanked IMEC and the Workers for their support.

## Decision

### 63. *The Governing Body:*

- (a) *urged all groups to aspire to achieve gender parity among their accredited delegates, advisers and observers to the Conference and Regional Meetings;*
- (b) *requested the Director-General, after every Conference as well as Regional Meeting, to continue to bring the issue to the attention of Members and groups that had not reached the minimum target of 30 per cent of women’s participation with the goal of gender parity, and to periodically report to the Governing Body on obstacles encountered, as well as measures taken by tripartite constituents to achieve gender parity;*
- (c) *requested that the report of the Director-General list delegations that meet the long-standing minimum target of 30 per cent participation; and*

- (d) requested the Office to continue hosting workshops for all groups, including social partners and those outside Geneva, who might need assistance to reach gender parity in delegations.*

(GB.332/LILS/2, paragraph 23, as amended by the Governing Body.)

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

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

#### **Proposed form for reports to be requested under article 19 of the ILO Constitution in 2019 on a number of instruments on employment promotion through the regulation of the employment relationship** ([GB.332/LILS/3](#))

- 64.** *The Employer spokesperson* said that two points were essential: the proposed form for reports to be requested under article 19 of the ILO Constitution must reflect the language of the instruments; and the questions should make clear that it was not mandatory to implement the instruments in question. Given that the form did not fully reflect the language of the instruments, the Employers' group proposed the following amendments.
- 65.** First, the General Survey should examine "employment arrangements", instead of "alternative employment arrangements". Moreover, it should focus specifically on "groups of workers vulnerable to decent work deficits and exclusion". However, the General Survey should not examine those issues as such, but rather the application and impact of the instruments that addressed those issues.
- 66.** Second, references to the terms "alternative employment arrangements", "alternative working arrangements", "alternative contractual arrangements" and "alternative working relationships" in questions 2, 8, 10, 60 and 61 should be removed, since those were not widely accepted terms and did not correspond to the language of the instruments.
- 67.** Third, question 11 on dependent self-employment was not based on paragraphs 1 and 4 of the Employment Relationship Recommendation, 2006 (No. 198), and should therefore be removed. Similarly, the phrase "including those in dependent self-employment" should be deleted from question 12.
- 68.** Fourth, references to paragraphs 3, 8, 19, 20 and 22 of Recommendation No. 198 were not included in the proposed report form. In particular, references to paragraphs 3 and 8 of Recommendation No. 198 should be added to question 8, as follows: "Please indicate any measures that aim to ensure that the national policy is formulated and implemented in consultation with the most representative organizations of employers and workers".
- 69.** In question 12, the wording provided in brackets, which was not contained in Recommendation No. 198, should be included in a footnote rather than in the body of the proposed report form.

70. A new question should be added after question 16, as follows: “Please indicate any measure taken to ensure that the national policy for the protection of workers in an employment relationship does not interfere with true civil and commercial relationships”.
71. Question 46 should be divided into two separate questions, since it conflated the provisions of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and Recommendation No. 198.
72. With the inclusion of the above amendments, the Employers’ group could approve the draft decision.
73. *The Worker spokesperson* said that the rapid changes in the world of work required that the General Survey address the challenges posed by the growth in non-standard forms of employment. The challenge was to ensure that all workers, including those in non-standard forms of employment, benefited from labour-standard protection. Given the concentration of workers vulnerable to decent work deficits and exclusion in non-standard forms of employment, it was particularly important for the ILO to have comprehensive, up-to-date information to respond to the challenge.
74. The Workers’ group considered that the questionnaire covered the relevant instruments adequately, and welcomed the incorporation of a separate section on social dialogue and the role of employers’ and workers’ organizations. Although the group had been ready to approve the draft decision, it was concerned by the proposals made by the Employers’ group. The proposals could risk reopening a matter already decided in November 2017, when there had been consensus that the article 19 questionnaire should examine instruments that were particularly relevant to alternative or non-standard forms of employment. She asked the Office for clarification on that point.
75. There were also concerns regarding terminology. Although the Workers’ group would prefer to use the term “precarious work”, it was prepared to compromise and accept the term “non-standard forms of employment”, used in prior Governing Body discussions, as well as the term “alternative employment arrangements”. However, the group could not agree to removing the word “alternative”, since such a deletion would change the focus of the survey and mean that the relevant decision was being revisited, which the Workers were against.
76. Furthermore, the focus of the survey should not be on instruments concerning particular groups of disadvantaged workers. The survey would not consider the full operation of the relevant instruments, but rather their operation in relation to non-standard forms of employment. In addition, it was not necessary for questions to be limited to the specific wording of the instruments. One of the aims of the article 19 survey was to evaluate the current impact and relevance of standards. The purpose of the General Survey was to consider the application of the instruments to forms of employment that were not prevalent or that were even unknown at the time that the instruments were adopted. To do otherwise would be contradictory to the purpose of the General Survey and would prevent experts and the constituents from basing their reflections on the current reality of the world of work. That would render policy recommendations meaningless. It would also contradict the flexible and coherent approach to the article 19 survey procedure taken in the ILO Declaration on Social Justice for a Fair Globalization. In fact, previous General Surveys, such as the questionnaire on working time, approved at the 326th Session of the Governing Body, had included questions with specific terms not used in the ILO instruments.
77. Use of the term “dependent self-employment” was clearly in the ambit of Recommendation No. 198 and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), although not explicitly mentioned. The term refers to cases where there could be complex questions regarding whether it was a type of employment,

self-employment or something in between. The lack of clarity suggested that dependent self-employment was insufficiently covered by legislation. Some countries, however, had attempted to define it. In order to give countries sufficient opportunity to report on those steps, it should be included in the General Survey.

- 78.** *Speaking on behalf of IMEC*, a Government representative of the United States said that, although the report form was generally clear, direct and an improvement on other article 19 report forms, the questionnaires had become too broad and lengthy in recent years. IMEC had proposed a number of ways to improve the report form. First, the language of the draft questions should be aligned to that found in the relevant instruments in order to focus the report form and clarify individual questions. Second, many questions were framed in a way that presumed that member States had a defined coherent national employment policy in place when many, in reality, did not. Questions should be reframed so that member States could provide fully responsive answers regardless. Third, IMEC had proposed edits to address redundancies, improve clarity, correct typographical errors and eliminate provisions that strayed from the language of the instruments. Fourth, reporting requests and questionnaires should be streamlined to encourage governments to submit reports in a timely manner. IMEC's suggestions aimed to facilitate reporting by providing robust information, clarifying questions and reducing the reporting burden on governments.
- 79.** Going forward, IMEC wished to see more tightly focused questionnaires. Early electronic consultations on article 19 report forms could facilitate an exchange of edits so that the Governing Body would be in a position to adopt the form more readily. The Office should circulate the report form electronically in a format that was easily accessible and editable. IMEC's preference was to receive an electronic report form in a simple word document without text boxes or other editing restrictions. IMEC could support the draft decision provided that its proposed edits were taken into account.
- 80.** *Speaking on behalf of the Africa group*, a Government representative of Cameroon commended the Office on the inclusive and participative approach taken in the preparation of the report form and welcomed the instruments chosen, which addressed one of the priorities of the African region: youth employment. However, the report form should respect the content of the instruments. One of the concerns of the Africa group, however, was to ensure that the form could include questions aimed at ensuring that workers continued to receive work-related benefits, despite the emergence of non-standard forms of employment. Although the group supported the draft decision, it requested that its concerns be taken into consideration.
- 81.** *A Government representative of India* noted the document's reference to the examination of alternative employment arrangements and welcomed the focus on workers vulnerable to decent work deficits and exclusion, who were often concentrated in non-standard forms of employment. She expressed appreciation that questions on the transition to formality attached importance to issues such as reducing costs of compliance and facilitating starting a business, as creating an atmosphere conducive to business and entrepreneurship would help promote formal employment. Skills development and lifelong training mechanisms should also be assessed in the General Survey questionnaire. She expressed the hope that a General Survey report on the relevant instruments would provide an overview of the current situation in member States with regard to the instruments concerned and help identify potential gaps in international labour standards.
- 82.** *The Employer spokesperson* agreed with the Worker spokesperson's request to the ILO that all proposals put forward should be compiled, since several good points had been raised and clarity was needed on what would be included in the article 19 report form. He also agreed that the matter should be resolved at the present session. The report form should be prepared on the basis of the selected Conventions and Recommendations and limited to concepts

contained in those instruments. Further discussion on concepts not included in ILO instruments was therefore unnecessary, and his group would subsequently submit its views to the Office for the consideration of constituents. He expressed the hope that consensus would be achieved after discussions on a revised version of the document that took into account suggestions made by the constituents, in particular those raised by IMEC.

- 83.** *The Worker spokesperson* agreed with the Employer spokesperson on the need to achieve consensus by the end of the present Governing Body session. She welcomed the comments made by governments, noting the importance attached to the need to ensure that workers in all forms of employment benefited from labour standard protection and the focus on decent work deficits in non-standard forms of employment. She expressed the hope that the scope of the General Survey would not be changed; that the reference to alternative working arrangements would be maintained; and that the Office would consider possible changes to the wording in certain questions of the article 19 report form. The report form should be as straightforward as possible to ensure government responses were complete and clear, which would help the ILO obtain as much information as possible to cover the issues fully.
- 84.** *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that the Office valued the constructive feedback on difficulties encountered by governments when completing previous questionnaires, since that would help the ILO improve future questionnaires. At its previous session, the Governing Body had indeed decided that the General Survey should examine employment-related instruments relevant to alternative working arrangements which had gained greater relevance due to changes in the world of work, and that the survey would address the growing diversity in employment arrangements and seek information to produce a comprehensive overview of the current situation in member States. However, given the concerns raised by IMEC, the Office would review the article 19 report form on the basis of the current discussion and consultations with those constituents that had provided suggestions. The revised version would then be published for adoption by the Governing Body.
- 85.** *The Employer spokesperson* said that the article 19 report form should be developed in accordance with the instruments listed and should not refer to concepts not mentioned in those instruments for legal reasons and to avoid confusion. However, that did not mean he was opposed to the concepts discussed.
- 86.** *A Government representative of the United States* said that, on reviewing the suggestions proposed by IMEC, the wording “alternative employment arrangements”, which her group had understood to be the focus of the article 19 report form, had not been deleted. A number of the relevant instruments referred to “all employment relationships”, which her group understood to include alternative employment relationships.
- 87.** *The decision was deferred to a future session of the Governing Body.*