



SIXTH ITEM ON THE AGENDA

**Report of the Working Party on Policy
regarding the Revision of Standards**

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Introduction

1. The Working Party met on 6 November 2001 under the chairmanship of Mr. J.-L. Cartier (Government, France). The Worker Vice-Chairperson was Mr. U. Edström (Sweden).
2. Mr. Funes de Rioja (Employer Vice-Chairperson) invited the Working Party to take note that Mr. B. Noakes (Australia) had been designated to succeed him as Employer Vice-Chairperson and spokesperson for the Employer members, a role that he had to relinquish due to other responsibilities. It had been a privilege to serve in this function for the last five years, and an honour to present a successor with such eminent experience and capabilities as Mr. Noakes and who was so well known to the ILO.
3. The Worker members expressed their profound appreciation and respect for the contribution by Mr. Funes de Rioja to the work of the Working Party in his capacity as the spokesperson for the Employer members. They were very happy that Mr. Noakes, for whom they had the same respect, succeeded Mr. Funes de Rioja in this capacity.
4. The Chairperson congratulated Mr. Funes de Rioja on the new duties he had been entrusted with and was equally happy at the appointment of Mr. Noakes, who was well known and highly regarded within the ILO, as the new spokesperson for the Employers.

A. Information note on the progress of work and decisions taken concerning the revision of standards¹

5. The Chairperson recalled that the information note was not a document distributed to the general public. It was intended for the Office as well as the field offices and was also submitted every year to the Conference Committee on the Application of Standards. This document, which was regularly updated, had proven very useful to practitioners.
6. The Employer members thanked the Office for the useful and comprehensive document and expressed satisfaction at the way in which it served as a record and reminder of the decisions taken and the progress made by the Working Party. This document should be widely disseminated, inter alia, via the Internet. More specifically, paragraph 6, second sentence, should be adjusted to reflect that the substance of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up were the principles and rights contained in the Constitution and not in the Conventions at issue. The importance of clarifying the meaning of “shelving” was underscored with reference to paragraph 30.
7. The Worker members welcomed the document and echoed the Employer members’ request for a wide distribution of this document both within the Organization, to all technical departments and field offices, to governments and employers’ and workers’ organizations, as well as through the ILO web site. More specifically they asked the Office to inform the Working Party at its next meeting on the follow-up given to the request for consultations with member States concerning the four Conventions relating to workers in non-metropolitan territories referred to in paragraph 28, as well as to the requests for information concerning the 14 up-to-date Conventions mentioned in paragraph 24. With

¹ GB.282/LILS/WP/PRS/1.

reference to paragraph 53, they reiterated the need for technical assistance from the Office to member States in order to help them to ratify Conventions. The Worker members were disappointed to note that since the last Working Party meeting only five member States had ratified the constitutional amendment which would allow the Conference to abrogate Conventions. These ratifications brought the number of ratifications to 69. Some seven Government members of the Working Party and 17 members of the LILS Committee had not yet ratified this amendment. The Worker members inquired about the follow-up given to their previous request regarding the launching of a campaign for the promotion of the ratification of this amendment in the countries that still had not done so and suggested to involve the workers' and employers' organizations in such a campaign. With reference to the withdrawal of obsolete Recommendations (paragraphs 48-49), they asked for confirmation that the remaining 21 Recommendations would also be placed on the agenda of the Conference. As regards table 1 of Appendix II, the Worker members considered that it was more appropriate to place Convention No. 158 under the heading "Social security" and Recommendation No. 113 under the heading "Tripartite consultations". Furthermore, it would also be useful to include a definition of the terms used in the categorization of the instruments. The Workers' group disagreed with the proposed change of paragraph 6, making reference to the terms used in paragraph 2 of the Declaration on Fundamental Principles and Rights at Work and its Follow-up. Instead, they suggested replacing the words "the substance of" with "are embodied in". Finally, with reference to paragraph 10, the Worker members emphasized the importance of proceeding concurrently with ratification of a revised Convention and denouncing previous Conventions.

8. The Employer members indicated that they were opposed to placing Convention No. 158 under the heading "Social security", as this would lead to confusion.
9. In response to the Worker members, the Chairperson underlined the importance of using terms which were clear to all. He pointed out that this issue was addressed in the document prepared by the Office on the fifth item on the agenda of the present meeting of the Working Party.
10. A representative of the Director-General clarified that the question of the withdrawal of 20 Recommendations was already on the agenda of the 2002 Conference and that a proposal to place the question of the withdrawal of 16 additional Recommendations on the agenda of the Conference in 2004 was before the Governing Body at its present session. The remaining five Recommendations that were proposed for withdrawal were maritime instruments and should be considered in the context of the forthcoming Maritime Session of the Conference, probably in 2005.
11. The representative of the Government of Denmark asked for a clarification regarding paragraph 40, in particular concerning the distinction made between Recommendations that had been replaced by way of explicit Conference decisions, and those that may have become de facto obsolete following a change of circumstances or the adoption of later standards on the same subject. She wanted to know why Recommendations Nos. 61 and 62 had not been withdrawn in the same manner as their accompanying Convention No. 66.
12. In response to the request by the representative of the Government of Denmark, a representative of the Director-General recalled that, according to the methods adopted by the Working Party at the beginning of its work, Recommendations replaced by explicit Conference decisions, thus legally, were distinguished from those that had become de facto obsolete. Given that the former no longer existed from a legal point of view, only the second were proposed for withdrawal by the Conference. However, it was true that these issues needed to be further clarified in the future.

13. The representative of the Government of Trinidad and Tobago noted with satisfaction that in relation to the constitutional amendment to abrogate obsolete Conventions, the minimum number of ratifications from Members of chief industrial importance needed for the adoption of the amendment had been obtained. However, there was still progress to be made with regard to ratifications from other member States in order to obtain the required two-thirds majority before the amendment could enter into force. She suggested more vigorous promotional work from the Office as well as a regional analysis of existing ratifications in order to target promotional efforts at a regional and subregional level through the ILO regional offices.
14. The Chairperson recalled that pursuant to article 36 of the Constitution, the Instrument for the Amendment of the Constitution of 1997 would enter into force when it had been ratified or accepted by two-thirds of the Members of the Organization (this means 117 out of 175), including five Members of chief industrial importance. At present, six of the ten Members of chief industrial importance had already ratified or accepted the amendment. However, the total number of ratifications or acceptances registered was only 69. As indicated by the representative of the Government of Trinidad and Tobago, the promotion of the ratification of this amendment must be targeted in order to be efficient. In this context, action by the regional offices was also important. In his opinion, there was a broad consensus on this issue, which should result in ratifications of this amendment.
15. With reference to the proposals in the document, the Employer members said that, while generally speaking denunciation and ratification might be proposed concurrently, this depended on the circumstances and was not always possible.

B. Deferred examination of Conventions concerning night work of women in industry²

16. The Chairperson pointed out that the ILO had been concerned with the subject of night work of women since its inception, as demonstrated by the adoption of the Night Work (Women) Convention, 1919 (No. 4), at the First Session of the International Labour Conference. The instruments which subsequently had been adopted reflected the evolution of the world and attitudes over time. The Working Party undertook a first examination of Convention No. 4 and of the Night Work (Women) Convention (Revised), 1934 (No. 41), in November 1996. The decisions taken by the Governing Body following this examination included the promotion of the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, or, where appropriate, of the Night Work Convention, 1990 (No. 171), as well as the denunciation, as appropriate, of Conventions Nos. 4 and 41. The Governing Body also requested a General Survey on night work of women in industry. Finally, it decided that the shelving of Conventions Nos. 4 and 41 would be considered in due course and that the status of Convention No. 89 and its Protocol would be re-examined at a subsequent meeting of the Working Party in the light of information obtained by the Office. The Working Party was called upon to conduct this re-examination at this present meeting. The Committee of Experts had completed the requested General Survey, which had been discussed in the Committee on the Application of Standards during the last session of the Conference. The General Survey had concluded that Conventions Nos. 4 and 41 were obsolete. The General Survey's conclusions concerning the three other instruments allowed for a progressive development and should enable a clarification of the decisions by the Governing Body in their regard. The

² GB.282/LILS/WP/PRS/2.

proposals contained in paragraphs 15 and 16 of the document of the Office were prepared in light of the General Survey and the discussion which had taken place at the Committee on the Application of Standards.

- 17.** The Employer members noted that the document reflected the complex nature of this subject which had been brought about by the accumulation of instruments over time. They did not agree with the view expressed by the Committee of Experts that the current trend towards easing or eliminating legal restrictions on women's employment and strengthening the principle of non-discrimination, while positive in itself, should not result in a legal vacuum with night workers being deprived of any regulatory safeguards. This approach had led to proposing the ratification of Convention No. 171, an instrument ratified only by six States so far. The low level of ratifications implied that there was a problem with this Convention. While an examination of this Convention was not within the mandate of the Working Party and was not included in the scope of the General Survey, recommending the ratification of such a poorly ratified Convention was contrary to the principle of universality of standards. Moreover, it was a largely shared opinion that Conventions Nos. 4, 41 and 89 were discriminatory. Furthermore, it was inappropriate to propose a promotion of these Conventions on the ground that their denunciation might entail a legal vacuum. In fact, a denunciation of these Conventions would not necessarily mean that the corresponding national regulations would disappear. In addition, the Employer members considered that paragraph 13 overstated the results of the discussion in the Conference Committee. The opinions were almost equally divided as to whether the instruments on night work of women were discriminatory or not. Moreover, they disagreed with the comment in paragraph 14 that the General Survey had confirmed that Convention No. 171 was up to date. Against this background they disagreed with the proposed recommendations in paragraphs 15(a) and 16(a) but agreed with the recommendation in paragraph 15(b) to shelve Conventions Nos. 4 and 41 and the proposal to examine the question of their withdrawal or abrogation, as appropriate, in due course. With regard to paragraph 16(b), the Employer members considered that either shelving or the maintenance of the status quo should be proposed.
- 18.** The Worker members noted that the Office document provided a good analysis based on the General Survey and the debate in the Conference Committee on the Application of Standards. They agreed that Conventions Nos. 4 and 41 had lost their value, and that Convention No. 89, together with its 1990 Protocol, allowed for greater flexibility and was more easily adaptable to changing circumstances and needs. The Working Party had already taken decisions regarding these Conventions in November 1996. Convention No. 171 reflected the current approach for countries which were prepared to eliminate all restrictions on night work for women and regulate the harmful effects of night work for men and women alike. The Worker members also noted that the mandate of the Working Party was confined to standards adopted before 1985 and an examination of the Protocol to Convention No. 89 was therefore outside its mandate. Furthermore, it was not appropriate to contemplate a change in the practice of the Working Party to recommend the ratification of a revising up-to-date instrument in parallel to the denunciation of an older instrument. While Convention No. 171 was the modern instrument in this area, it was unfortunately not possible to apply this instrument in all countries. That was why the 1990 Protocol to Convention No. 89 had been adopted at the same time as Convention No. 171. The purpose was to address all the needs in this area, not through discrimination but by promoting the protection of vulnerable groups in certain countries and professions. The Worker members also underlined that in paragraph 202 of the General Survey the Committee of Experts considered that efforts should be made to encourage both the ratification of Convention No. 171 and the 1990 Protocol to Convention No. 89. The Worker members considered the proposals contained in the document to be quite reasonable and balanced and agreed thereto.

19. A Worker member of France (Mr. Blondel) stated that while he was entirely in favour of the principle of equality between men and women, this principle should not prevent affirmative action. Furthermore, night work should, in general, to the greatest extent possible, be limited. The authorization of night work for women in industry did not constitute progress, even if it corresponded to an evolution in practice. Those who were against such affirmative action could also examine the reasons for the prohibition of child labour. He also recalled that France had denounced Convention No. 89 following a decision by the European Court of Justice (ECJ). This raised two issues. The first related to the fact that, under a threat of a penalty payment, the ECJ had requested a State to denounce an international Convention that it had freely ratified. In addition, since this denunciation, the French Government had not ratified Convention No. 171. However, Belgium and Portugal, both Members of the European Union, had ratified this Convention. This could be considered as a loss of momentum for the French Government in ratifying Conventions, but also as a danger. The non-ratification of Convention No. 171 had been justified by a need to seek a consensus within the European Union prior to any new ratification. But as already seen for Convention No. 89, the views of the Member States of the European Union differed and such unanimity was difficult to obtain. The relinquishing of the national sovereignty of the European States in the area of ratification did therefore not seem desirable, especially in the light of a future enlargement of the EU.
20. The Chairperson recalled that the issue regarding the relationship between the European Union and the ILO was an old one, was very complex and that no solution had yet been found. Such an issue was in fact becoming more important as the questions arising from the ILO Conventions were being increasingly considered as falling within the domain of European Union law.
21. The Employer members also noted that the scope of the different instruments was another element to take into consideration. Convention No. 171 was an instrument with a much broader scope than the earlier Conventions in that it applied both to women and men and to a larger number of sectors of activity.
22. The Worker members emphasized, with reference to the Employer members' comments, that during the first discussion on these instruments, the Working Party had already come to the conclusion that governments should be invited to ratify Convention No. 171. Thus, this question had already been dealt with.
23. The representative of the Government of India recalled that night work was a by-product of the Industrial Revolution of the eighteenth and nineteenth centuries and the harsh working conditions in the early stages of industrialization which particularly affected women workers. The advent of night-time working in factories disrupted the long-established social pattern of daytime working and weekly days of rest. Thus, the adoption of measures to protect women and children from the harmful effects of night work became a priority. Today, however, due to the recent technological changes there was a need for gender equality rather than the protection of women only on the basis of sex. With increased levels of literacy among the female population in India, more and more women were being employed in various sectors of the economy. In order to provide opportunities for employment to women workers in factories, there was a need for removing or relaxing certain restrictions imposed on such employment. These kinds of exemptions were mostly required in textiles, electronic, electrical, leather, food processing, watch and clock, lighting and other precision instruments manufacturing units. Various women's organizations had also been demanding equality, and hence such exemptions. It was felt that such exemptions would not only help to optimize the current capacities but would also lead to increased employment opportunities for women. India had ratified Convention No. 89 and the Government was actively examining the Protocol of 1990 with the intention

of ratifying it. The representative noted that her country supported the proposals made in paragraphs 15 and 16 of the document.

- 24.** The representative of the Government of Switzerland noted that the document demonstrated how instruments on night work of women and night work had evolved, in general, and the difficulty for the law to keep up with changing patterns in practice. Following the denunciation of Convention No. 89 by Switzerland for reasons of non-discrimination, the Swiss labour law extended protection to both men and women working at night. This law was drafted in collaboration with the social partners. Although protection thus was covered in law, Convention No. 171 had not been ratified since it was considered as too prescriptive. The Governing Body had on several occasions invited member States to ratify recent Conventions which had not been examined by the Working Party and which had not received a large number of ratifications. Although such Conventions were recent they might be considered as not entirely up to date. As it was not possible, however, at this stage to change this practice, and for reasons of coherence, Switzerland would accept the recommendations proposed in paragraphs 15 and 16. However, since 1920 the ratification policy of the Swiss Government was to proceed to ratification only when international obligations were fully met by national legislation and this policy would not be modified.
- 25.** The representative of the Government of Namibia thanked the Office for the document and noted that paragraph 15 represented the most practical way to sort out the complex situation created by the accumulation of instruments over the years. While his Government considered that Conventions with discriminatory elements should not be promoted by the Working Party, the recommendation contained in paragraph 15 suggested a gradual process towards an elimination of discrimination. The implication of this paragraph was that Convention No. 89 would cease to be relevant in the near future as a result of the process of successive ratifications and denunciations. Thus, his Government expressed support for paragraph 15(a). With reference to the comments made by Mr. Blondel, it was noted that a comparison between child labour Conventions and Conventions on women was inappropriate. Women should not be considered as minors.
- 26.** The representative of the Government of the Netherlands noted that her Government agreed with the proposals in the document but would like to stress the importance of the principle of equality of opportunity and urged the Office to undertake efforts to enhance the implementation of this principle.
- 27.** The Chairperson underlined that this question was complex due to its historical background. The first Convention on this subject was adopted in 1919, the last one in 1990, which therefore does not come within the competence of the Working Party. It was however difficult to examine the instruments concerning night work of women in industry without considering this latter Convention. A consensus seemed to exist on the outdated nature of Conventions Nos. 4 and 41. Otherwise Convention No. 89 and its Protocol and Convention No. 171 reflected two different approaches. At the time of the adoption of Convention No. 4, the focus was the prohibition of night work of women in industry. While this concern was maintained, more and more exceptions to this prohibition were allowed. In this light, Convention No. 89 and its Protocol remain of interest to a large number of countries. Convention No. 171 conformed to a more modern approach to this issue based on equality between men and women which constitutes one of the fundamental principles of the ILO. A solution was thus needed which allowed for a choice between the two and which would encourage States to adopt a more modern approach. The Governing Body had already taken certain decisions in regard to each of the instruments examined. Neither the General Survey nor the discussions of the Working Party seem to entail any review of these decisions.

28. In light of the views expressed in the discussion, the Worker members addressed an appeal to the Employer members to agree to the proposals suggested in the Office document, as they constituted a progressive approach towards the elimination of discrimination.
29. In response to a request for clarification from the Employer members, the representative of the Government of Namibia noted that, in his view, all parties seemed to share the same concerns regarding the instruments at issue. While the proposed conclusions temporarily could lead to a strengthening of Convention No. 89, the spirit of the recommendations in the Office document was, on the whole, to promote the non-discriminatory instrument. The invitation to States parties to Conventions Nos. 4 and 41 to ratify Convention No. 89 as revised by the 1990 Protocol, should be seen as a necessary temporary step which would enable progress to be made in the future.
30. The Chairperson stated that, if a State was not yet able to ratify Convention No. 171, it could ratify Convention No. 89 as revised by its Protocol. These instruments represented an improvement as compared to Conventions Nos. 4 and 41. The Office proposals were balanced and progressive: States were invited to ratify Convention No. 171 or, if that was not possible, Convention No. 89 and its Protocol.
31. In the light of the discussion held and, in particular, of the views expressed by the Governments, the Employer members stated that they withdrew their objections to paragraphs 15 and 16 of the document.
32. After an exchange of views, the Working Party expressed its agreement with the proposals made by the Office. ***It proposes to recommend to the Governing Body that:***
- (a) ***States parties to the Night Work (Women) Convention, 1919 (No. 4), and the Night Work (Women) Convention (Revised), 1934 (No. 41), be invited to contemplate ratifying the Night Work Convention, 1990 (No. 171), or, if that is not possible, the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, and denouncing Conventions Nos. 4 and 41, as appropriate, at the same time; and***
 - (b) ***Conventions Nos. 4 and 41 be shelved with immediate effect and the question of their possible withdrawal or abrogation, as appropriate, be examined in due course.***
33. Regarding Convention No. 89, ***the Working Party might recommend to the Governing Body that:***
- (a) ***States parties to the Night Work (Women) Convention (Revised), 1948 (No. 89), be invited to contemplate ratifying the Night Work Convention, 1990 (No. 171), or, if that is not possible, the 1990 Protocol to Convention No. 89; and***
 - (b) ***the status quo be maintained with regard to Convention No. 89.***

C. Follow-up to consultations regarding social security instruments³

34. The Chairperson thanked the Office for the rich and detailed document it had prepared. This document reflected the consultations undertaken at the request of the Governing Body with regard to seven Conventions and three Recommendations. The Governing Body had already taken decisions on each of these instruments. The conclusions of the general discussion on social security held during the last session of the Conference contained no elements that contradicted these decisions.
35. The Employer members supported the views expressed by the Chairperson concerning the quality of the document and congratulated the Office for having carried out a complete and valuable analysis of the consultations held with the constituents. The subject was complex and the Employers wanted to do justice to this analysis by having enough time to consider it extensively and to analyse it, inter alia, in the light of the outcome of the Conference discussion on the subject. Thus, they proposed to defer the discussion on this document until the next meeting of the Working Party in March 2002.
36. The Worker members congratulated the Office for this very comprehensive document which contained very useful information. They were responsive to the request made by the Employer members and agreed that the document should be discussed in March 2002, at which time the examination of this document would have to be finalized. Deferring the examination of this report gave all parties concerned the opportunity to have an in-depth internal discussion on this extensive document which should be resubmitted, without any modifications, at the next meeting of the Working Party.
37. In light of the comments from the Worker and Employer members, the Chairperson concluded that the Office would submit this document, in its present form, to the Working Party at its next meeting.
38. The Working Party agreed to defer the examination of the present document until its next meeting in March 2002.

D. Possible groups of standards⁴

39. The Chairperson indicated that the document outlined potential groups of standards, based on an empirical study. This did not constitute a definitive classification of ILO Conventions and Recommendations but rather an initial approach. It was the first time that such a document had been submitted with a view to a tripartite discussion. The grouping of standards could be used in many ways. Firstly, it might constitute a purely administrative classification aiming at identifying the current distribution of competencies within the ILO. Reference had also been made to groups of standards in the framework of the discussions on the reporting system under article 22 of the Constitution. Furthermore, such a division could facilitate the dissemination of information to the public in the context of publications on standards, which would be the object of a discussion during the next meeting of the Working Party.
40. The Employer members asked the Office to clarify the purpose of the groups of standards.

³ GB.282/LILS/WP/PRS/3.

⁴ GB.282/LILS/WP/PRS/4.

41. A representative of the Director-General (Mr. Tapiola) recalled that the question of groups of standards had arisen in the context of the discussion and adoption of an integrated approach to standards-related activities in November 2000. One of the elements of these discussions had been that this question should be examined against the background of the four strategic objectives of the Organization and the two cross-cutting themes of gender and development and that it was important in this context to follow up on the work of the Working Party. At an early stage it had become clear, however, that the strategic objectives and the cross-cutting themes had to be further subdivided into “families” or (with the terminology which gained acceptance over time) “groups” of standards. In March 2001 the work in the Governing Body on possible improvements in the supervisory system of the ILO proceeded to an examination of the system of reporting on ratified Conventions. In the context of this discussion in the LILS Committee of the Governing Body, a possible grouping of requests for reports under article 22 by subject matter was raised. Such groups of standards could serve to maximize the synergy in reporting so that standards on related subjects could be reported upon in the same year. This discussion resulted in the decision by the LILS Committee to request the Working Party to “examine the question of groups of instruments” at its present session. The document on “Possible groups of standards” responded to this request by the LILS Committee and represented a first attempt to examine, in a tripartite context, what such “groups” of standards might look like. These groups had been developed on the basis of an internal administrative classification of standards, in the light of the four strategic objectives. In recent informal consultations it had become clear that in order to serve the intended purposes in the context of the reporting obligations, the groups developed so far were not sufficiently specific. If, however, there would be agreement on the principle of regrouping standards for the purposes of supervision, then more specific proposals for grouping the Conventions could be made to the LILS Committee in March 2002. Such a proposal would necessarily be different from the grouping now presented, which simply was a breakdown of Conventions by the four strategic objectives of the Organization in the decent work context.
42. The Worker members indicated that in their view, the present document appeared to present groups of standards mainly for administrative purposes, and that, as such, these groups were not intended to be the basis for changes in the supervisory procedures or for an integrated approach to standards-related activities. Paragraph 5 of the document made it clear that the present groups indicated “how a given subject area is situated with regard to the strategic objectives and, from the point of view of internal administration, which sectors would be chiefly involved in the exercise”. In this regard, they pointed out that the Standards and Fundamental Principles and Rights at Work Sector carried a central responsibility regarding standards and in no case should the question of groups lead to a dispersal of responsibilities regarding standards across various sectors and technical departments; the central role of the Standards Department in supervising the application of standards had to be maintained. They further noted that in the discussion of developing groups for the purposes of improving the article 22 reporting procedures, the article 19 reporting procedures should also be taken into consideration. As regards the actual groups proposed in the appendix, the Worker members noted that the standards had been further subdivided according to the decisions taken by the Governing Body in their respect, but that such subtitles did not appear necessary in the light of the stated purposes of the groups. While the term “outdated” was useful in documents for a wider audience, in technical documents it might be more appropriate to indicate the precise status of such instruments, such as “shelved”, “obsolete” or “withdrawn”.
43. The Employer members stated that the purpose of grouping standards was not the administrative or operational convenience of the Office. Standards should be grouped by subject matter, and not by strategic objective. Moreover, the attempt to group them by strategic objective was not fully realized in the present document, as it had become necessary to create a fifth grouping of standards to accommodate those which did not

conveniently fall into the four strategic objectives. The groups developed in this context should be coordinated with the groups to be discussed by the LILS Committee, and should follow along the same lines. Turning to the appendix with the list of possible groups of standards, standards appearing under subheading 4.2 “Indigenous and tribal peoples” should not be placed under “Fundamental principles and rights at work (and related standards)”. Furthermore, the Indigenous and Tribal Peoples Convention, 1969 (No. 169), and the Indigenous and Tribal Peoples Recommendation, 1957 (No. 104), were classified under the subheading “Equality of opportunity and treatment.” In the Employer members’ view, these instruments did not deal with equality but rather granted special rights to specific groups of people. As regards the instruments contained in subheading 5.2 “Employment of children and young persons” they included instruments which were peripheral to the concerns of fundamental principles and rights. Finally, they noted that the Underground Work (Women) Convention, 1935 (No. 45), appeared twice under subheading 12.3.

44. An Employer member from Panama (Mr. Durling) stated that the inclusion of Convention No. 169 and Recommendation No. 104 under the heading “Fundamental principles and rights at work (and related standards)” made no sense from a philosophical, historical, and anthropological perspective. He recalled that Convention No. 169 had been adopted to allow indigenous societies to maintain their traditions. Governments assumed the responsibility to undertake systematic action to protect these rights. The Convention specifically promoted the rights of indigenous peoples to their customs and traditions, human rights and fundamental freedoms, and freedom from force or coercion. However, he noted that at times there were difficulties in reconciling the application of the Convention with fundamental principles and rights at work. Indigenous societies often were collective societies, which were not inclined to encourage the formation of trade unions, and had no need for collective bargaining as such, although they might allow members to join unions outside their reserve. Furthermore, in a recent case in his country, a teacher who had violated tribal laws was flogged in public according to tribal custom and despite public outcry. He would hesitate to introduce the rights of tribal peoples under the heading of fundamental principles and rights. Therefore, Convention No. 169 and Recommendation No. 104 needed a heading of their own.
45. A representative of the Director-General (Mr. Tapiola) stated that the document might have given the confusing impression that the groups of standards implied a certain hierarchy of standards. In fact, if certain instruments appeared under the heading of “Fundamental principles and rights at work”, it was because the work of the Office under these standards happened to fall under the responsibility of the sector bearing the same name. He asked if the problem would be resolved if the headings under the Roman numerals in the appendix were removed, leaving simply groups of standards which appeared to be linked together for operational purposes. Thus, discussions on the groups of standards as now presented should rather be conducted without the subheadings in each subject group.
46. The Employer members stated that this suggestion was in line with their view that the groups of standards should be classified by subject matter and not by strategic objectives.
47. The representative of the Government of Namibia noted that there seemed to be no clear purpose for the groups of standards, and that it was difficult to carry out this work without first stating the clear purpose of the exercise. He further noted that groups of standards already existed, in that standards had been classified into up-to-date and outdated instruments and standards for which there were requests for information. The present document therefore did not present groups but rather a matrix of standards, which included both the criteria of strategic objectives and the status of the instruments. In the future, there might be a need for different types of groups according to different criteria. If the present

groups were simply an exercise for administrative purposes which could be easily changed in the future, he saw no problem. If these groupings were to become a more official structure for standards, further discussion was needed. It might furthermore be useful to discuss flexible means to follow up on recommendations of the Working Party.

48. The representative of the Government of the United States recalled that there had been a tremendous amount of change in the past five to six years in relation to standards. The ILO had adopted the Declaration on Fundamental Principles and Rights at Work, and the Working Party had made progress in determining the status of Conventions and Recommendations. The adoption of the integrated approach had also had an impact at different levels of the Office and raised issues regarding new ways of dealing with reporting obligations. It was therefore necessary for the Working Party to take a look at the possible impact of its work on future standards-related activities. In his view, the present document was a first useful attempt to examine the results of the work of the Working Party in the context of a possible grouping of standards. It could serve as a starting point for a further discussion as to whether such groups might be useful for subsequent groupings of standards for the integrated approach to standards-related activities or for the purposes of supervision.
49. The Worker members noted that the ILO had been elaborating standards since 1919 while the four strategic objectives of the Decent Work Agenda had been adopted just a few years ago. Thus, the Workers regarded the grouping of standards as an administrative exercise reflecting distribution of technical competences within the Office, rather than an attempt to suggest a political division of standards. A classification of standards had already been developed for the internal use of the Office. While the Worker members did not object to groups of standards on such a basis and for descriptive purposes, they would react if such a grouping were to be used in order to establish which standards should be related to the article 22 reporting system or the integrated approach, inter alia, as such a question was not within the mandate of the Working Party. But this was not the purpose of this paper.
50. The representative of the Government of India wished to draw attention to the fact that the document before the Working Party seemed to be related to document GB.282/LILS/5 on the examination of standards-related reporting arrangements and that her response had been based on the assumption that these documents were related. The representative thought that organizing the supervision of the application of Conventions by groups would be useful and would facilitate the work of governments in fulfilling their reporting obligations. In the light of the discussion she wondered what was the purpose of the groupings presented before the Working Party.
51. The representative of the Government of Switzerland underlined that while the Working Party had decided that 71 Conventions out of 184 were up to date, this was still a large number of Conventions and the question of their visibility and promotion should be examined carefully. National ministries did not always understand how the Conventions fitted into the strategic priorities of the Organization. The process of grouping Conventions was extremely important for reasons of promotion. It could help explain the reasons for submitting reports and the actions to be undertaken for the modernization of standards. When such innovative action took place, the trap of discussing mandates of different ILO bodies should be avoided. The risk was falling back to low visibility for the 71 up-to-date Conventions dispersed over various areas of activity. While noting that certain clarifications were called for in relation to paragraph 5 of the document, the representative wished to thank the Office for a good start. He thought that the idea was worthwhile and it should be recalled that the Office had produced this document at the request of the constituents.

52. The Employer members were not inclined to propose any conclusions at this stage. They expected that the comments made during the discussion would help the Office to proceed with its work and hoped that the Office would take account of all of these comments.
53. The representative of the Government of Guatemala thanked the Office for preparing the document, which, as mentioned in paragraph 3, provided a framework for the organization of the work on standards within the Office. Furthermore, as underlined in paragraph 4, there could be other parallel groupings of standards with other purposes. Concerning the regular reporting system referred to in paragraph 5, the Governing Body first had to decide whether groupings of instruments should be established for the submission of reports. If this were to be decided, the distribution of competencies within the Office should be taken into account in order to avoid imbalances in the allocation of work among the different departments.
54. The Worker members recalled that the grouping of standards was not a new issue. The official compendium of international labour Conventions and Recommendations contained a table of contents by subject matter, which grouped standards into different subjects. Subject-oriented groups of standards had therefore always been part of how standards had been conceived.
55. The Chairperson stressed that, as the discussion had clearly demonstrated, it was not easy to carry out a grouping of the instruments. The report of the Working Party meeting would reflect the different opinions that had been expressed during the discussion and would serve as a useful contribution to further discussions in the Governing Body.

E. Publication of the results of the work of the Working Party on Policy regarding the Revision of Standards⁵

56. The Chairperson indicated that three types of publications had been presented. The country profiles, a publication on standards in general, aimed at the Members and researchers and a guide on standards, which would be completed by a CD-ROM. These projects could be carried out as a result of a contribution from the French Government. Additional contributions from governments were possible. The Chairperson indicated that, at the following meeting, a discussion should be held on the incorporation of the outcome of the work of the Working Party into ILO official publications. While modern methods of communication should be favoured, the Chairperson noted that certain countries did not have access to them and therefore it was necessary to continue to disseminate the results of the work of the Working Party through paper-based publications.
57. The Employer members underscored that the fact that the work of the Working Party had evolved should be taken into account in the context of any publication of its results. Furthermore they reiterated that country profiles were very useful and helpful tools for the governments concerned. They suggested that it would also be useful for a sample country profile to be made available to the Working Party. With reference to paragraph 4 concerning the publication on international labour standards, the Employer members noted that this publication should be confined to technical matters and not address issues of policy as such issues were of the competence of the Governing Body. Finally they welcomed the project concerning the CD-ROM and guide.

⁵ GB.282/LILS/WP/PRS/5.

58. The Worker members agreed with the Employer members that country profiles, which should be extended to cover all countries, were very useful. The current number of countries covered appeared to remain at 30. While an electronic database was required in order to develop these profiles and to keep them up to date, they should be disseminated not only electronically but also in printed form and made available to those Members who did not have access to the Internet. As for the publication on international labour standards and the envisaged CD-ROM, they should be user-friendly and be prepared in several language versions. The Worker members emphasized that the next step would be to integrate the results of the work of the Working Party into official ILO publications. Gratitude was expressed to the French Government for its financial contribution to the publications and an invitation was extended to other member States to follow this example.
59. The representative of the Government of the Netherlands wanted to know if the publication on international labour standards was to be published on the Internet.
60. A representative of the Director-General confirmed that the publication on standards would be a technical and not a political document. Furthermore the Office would do its utmost to render the publication user-friendly. For the time being, the publication on standards would only come out in printed form, but a CD-ROM could possibly be produced at a later date.
61. The representative of the Government of Trinidad and Tobago thanked the Office for the country profiles on Trinidad and Tobago and other countries in the Caribbean, which had proven very useful. She looked forward to the prospect of having such information available on the Internet and in an electronic database and was, in particular, looking forward to a CD-ROM and guide, which could include the long-awaited glossary of terms.
62. The representative of the Government of Burkina Faso suggested that the 30 country profiles already completed should be distributed. Country profiles on other countries should also be prepared. In addition, it was necessary to continue publishing documents in printed form, as many countries, especially on the African continent, did not have access to computer facilities.
63. The representative of the Government of Denmark welcomed the publication of the results of the work of the Working Party and especially the country profiles, which were very useful. Speaking on behalf of the Nordic countries, she expressed support for the project, already raised at the last meeting of the Working Party, to develop country profiles for all member States.
64. The representative of the Government of Namibia added his support to the project concerning country profiles for all member States and noted that such country profiles should provide an accurate picture of the action each member State needed to take in the light of the results of the work of the Working Party.

F. Programme of work for the forthcoming meeting of the Working Party

65. The Chairperson enumerated the items which could be placed on the agenda of the next meeting of the Working Party:
 - The updated information note on the progress of work and decisions taken concerning the revision of standards;
 - Follow-up to the recommendations of the Working Party, which was traditionally examined annually in March, including an examination of Conventions which are no

longer in force following denunciations and which could be proposed for withdrawal by the Conference;

- Follow-up on consultations concerning instruments on social security;
- The maternity protection instruments following the entry into force of Convention No. 183;
- A second discussion on the question of publications.

66. The proposed work programme was adopted without modification.

67. *The Committee on Legal Issues and International Labour Standards is invited:*

- (a) to take note of the report of the Working Party on Policy regarding the Revision of Standards, based on the documents submitted by the Office;*
- (b) to adopt the proposals in the corresponding paragraphs of this report on which the Working Party has reached a consensus.*

Geneva, 7 November 2001.

Point for decision: Paragraph 67.