



## SECOND ITEM ON THE AGENDA

**Deferred examination of Conventions  
concerning night work of women in  
industry****Introduction**

1. The Working Party on Policy regarding the Revision of Standards undertook a first examination of the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41) and the Night Work (Women) Convention (Revised), 1948 (No. 89) in November 1996.<sup>1</sup> The proposals of the Working Party, which were approved by the Governing Body, included the promotion of Convention No. 89 and its Protocol of 1990, or, where appropriate, of the Night Work Convention, 1990 (No. 171) and the denunciation, as appropriate, of Conventions Nos. 4 and 41. The Working Party also recommended that the shelving of Conventions Nos. 4 and 41 could be considered in due course. Finally, the Governing Body decided that member States be asked to submit reports under article 19 of the Constitution with a view to enabling the Committee of Experts to conduct a General Survey on the subject and that the Working Party re-examine the status of Convention No. 89 and its Protocol of 1990 at a subsequent meeting in the light of the information obtained by the Office.<sup>2</sup>
2. The Committee of Experts completed a general survey on night work of women in industry at its November 2000 session.<sup>3</sup> The General Survey was discussed in the Committee on

<sup>1</sup> See Appendix I.

<sup>2</sup> GB.267/LILS/WP/PRS/2, pp. 4-34; GB.267/9/2, para. 14(b)(ii) and (iii) and Appendix III (doc. GB.267/LILS/4/2(Rev.)), paras. 44-49.

<sup>3</sup> General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89) and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), Report III (Part IB), International Labour Conference, 89th Session, 2001, para. 64 (“General Survey”).

the Application of Standards during the 89th Session (2001) of the ILC.<sup>4</sup> The present report draws upon the conclusions of the General Survey and the subsequent discussion at the Conference Committee in order to assist the Working Party to conclude the examination of these instruments.

## General Survey on night work of women in industry

### Night Work (Women) Convention, 1919 (No. 4)<sup>5</sup>

3. The Night Work (Women) Convention (No. 4) was adopted at the first session of the International Labour Conference in 1919 and came into force on 13 June 1921. It provides, with certain limited exceptions, that women shall not be employed during the night in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed. This Convention was subsequently revised, but not closed to further ratifications, by Convention No. 41.
4. In its General Survey, the Committee of Experts noted that Convention No. 4 was “rigid”, “ill-suited to present-day realities” and “manifestly of historical importance only”.<sup>6</sup> It appeared that two States parties to this Convention had simply omitted to denounce it since they had already denounced Convention No. 89 (*Cuba, Spain*)<sup>7</sup> and one country (*Lithuania*) had enacted internal legislation to denounce the Convention but had not as yet formally registered its denunciation with the Office. The Committee concluded that Convention No. 4 no longer made a useful contribution to attaining the objectives of the ILO, and consequently should be shelved and, when the time comes, should be included among the Conventions which would be considered for abrogation.<sup>8</sup>

<sup>4</sup> Report of the Committee on the Application of Standards, *Provisional Record* No. 19, Part One, International Labour Conference, 89th Session, Geneva, 2001.

<sup>5</sup> As of 10 October 2001, 28 member States were bound by Convention No. 4 (*Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Colombia, Côte d’Ivoire, Cuba, Democratic Republic of the Congo, Gabon, Guinea-Bissau, India, Lao People’s Democratic Republic, Lithuania, Madagascar, Mali, Morocco, Nicaragua, Niger, Pakistan, Rwanda, Senegal, Spain and Togo*). Thirty member States had denounced it (*Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Cameroon, Chile, Congo, France, Greece, Guinea, Hungary, Ireland, Italy, Luxembourg, Malta, Mauritania, Myanmar, Netherlands, Peru, Portugal, Romania, South Africa, Sri Lanka, Switzerland, Tunisia, United Kingdom, Uruguay and Venezuela*). Among the 28 States parties to Convention No. 4, nine had also ratified Convention No. 89 (*Angola, Bangladesh, Burundi, Democratic Republic of the Congo, Guinea-Bissau, India, Pakistan, Rwanda and Senegal*).

<sup>6</sup> General Survey, *op. cit.*, para. 193.

<sup>7</sup> *Italy*, which was included among these countries at the time, subsequently denounced Convention No. 4. According to the Government member of Italy to the Committee on the Application of Standards, his country had in fact omitted to denounce Convention No. 4 when it denounced Convention No. 89 (Report of the Committee on the Application of Standards, *op. cit.*, para. 196). *Austria* recently denounced Convention No. 4 thus confirming a reference to this issue by the Committee of Experts. See General Survey, *op. cit.*, para. 193.

<sup>8</sup> *ibid.*

## Night Work (Women) Convention (Revised), 1934 (No. 41)<sup>9</sup>

5. The Night Work (Women) Convention (Revised) (No. 41) was adopted in 1934 and came into force on 22 November 1936. It excludes from the scope of the night work prohibition women holding responsible positions of management who are not ordinarily engaged in manual work and allows some flexibility in the application of the prescribed time limits. This Convention was subsequently revised and closed to further ratification by the adoption of Convention No. 89.
6. The Committee of Experts noted, among other things, that at the time when Convention No. 41 was closed to ratification only four member States were still bound by its provisions and that the current number of ratifications was only due to the fact that some countries, upon acceding to independence and becoming Members of the ILO in the late 1950s and early 1960s, had committed themselves to continue to apply the Conventions previously ratified by the colonial powers. The Committee further noted that one country (*Estonia*) had announced its intention to denounce this instrument on the first occasion, and that in three other countries (*Argentina, Benin, Suriname*), the Convention had ceased to apply in practice following the adoption of new labour legislation lifting the prohibition of night work for women. The Committee therefore concluded that not only was Convention No. 41 poorly ratified and its relevance diminishing, but also that it would be in the interest of those member States which were still parties to this Convention to ratify instead the revised Convention No. 89 and its Protocol, which allowed for greater flexibility and were more easily adaptable to changing circumstances and needs.<sup>10</sup>

## Night Work (Women) Convention (Revised), 1948 (No. 89)<sup>11</sup>

7. The Night Work (Women) Convention (Revised) (No. 89), was adopted in 1948 and came into force on 27 February 1951. It widens the scope of exclusions from the night work prohibition by adding women employed in health and welfare services who are not

<sup>9</sup> As of 10 October 2001, 16 member States were bound by Convention No. 41 (*Afghanistan, Argentina, Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Estonia, Gabon, Madagascar, Mali, Morocco, Niger, Suriname, Togo and Venezuela*). Twenty-two others had denounced it (*Belgium, Brazil, Congo, Egypt, France, Greece, Guinea, Hungary, India, Iraq, Ireland, Mauritania, Myanmar, Netherlands, New Zealand, Pakistan, Peru, Senegal, South Africa, Sri Lanka, Switzerland and United Kingdom*). Eighteen of these denunciations were a result of the ratification of Convention No. 89.

<sup>10</sup> General Survey, op. cit., para. 194.

<sup>11</sup> As of 10 October 2001, 46 member States were bound by Convention No. 89 (*Algeria, Angola, Bahrain, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Burundi, Cameroon, Comoros, Congo, Costa Rica, Democratic Republic of the Congo, Djibouti, Dominican Republic, Egypt, Ghana, Guatemala, Guinea, Guinea-Bissau, India, Iraq, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malawi, Mauritania, Pakistan, Panama, Paraguay, Philippines, Romania, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Swaziland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Tunisia, United Arab Emirates and Yugoslavia*) and 19 others had denounced it (*Austria, Belgium, Cuba, Cyprus, Czech Republic, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, New Zealand, Portugal, Spain, Sri Lanka, Switzerland, Uruguay and Zambia*). It should be noted that Convention No. 89 is open to denunciation from 27 February 2001 to 27 February 2002 and that four countries (*Austria, Cyprus, Czech Republic and Zambia*) denounced it on this occasion.

ordinarily engaged in manual work. It also provides for more flexibility in the application of the prescribed time limits and allows suspensions from the norm in specific cases.

8. The Committee of Experts noted a general trend worldwide to move away from a blanket ban on night work for women in industry and to give the social partners at the national level the responsibility for determining the extent of the permitted exemptions. It was also evident that more attention was now being paid to regulating night work for both men and women.<sup>12</sup>
9. A Protocol to Convention No. 89 was adopted in 1990.<sup>13</sup> According to this instrument, national laws or regulations may provide, in consultation with employers' and workers' organizations, variations in the prescribed time limits and exemptions from the prohibition of the night work contained in Convention No. 89. The Committee underlined that the Protocol provided "a tool for a smooth transition from outright prohibition to free access to night employment"<sup>14</sup> and represented a further step in the process designed for those States that wished to offer the possibility of night employment to women workers while maintaining some institutional protection to avoid exploitative practices and a sudden worsening of the social conditions of women workers.<sup>15</sup> However, according to the Committee of Experts, the ratification prospects of the Protocol appeared to be uncertain. This Protocol follows the gender-oriented perspective of Convention No. 89 and, along with the other instruments on night work of women, relies on the premise of the vulnerability and special need of protection of female workers.<sup>16</sup>
10. Convention No. 171, which was adopted at the same time as the Protocol, reflects a new approach to the issue of night work and addresses this issue for both men and women in its occupational safety and health dimension.<sup>17</sup> Convention No. 171 shifts its focus to the nature of night work as such, meaning work detrimental to health, generative of difficulties for the family and social life of the worker, and calling for special compensation.<sup>18</sup> The Committee of Experts noted that Convention No. 171 addressed the needs of those countries which would be prepared to eliminate all restrictions on night work for women

<sup>12</sup> General Survey, op. cit., para. 195.

<sup>13</sup> Following the denunciation of Convention No. 89 and the Protocol of 1990 by *Cyprus* and *Czech Republic*, *Tunisia* is the only country currently bound by the Protocol.

<sup>14</sup> General Survey, op. cit., para. 199.

<sup>15</sup> General Survey, op. cit., para. 199.

<sup>16</sup> General Survey, op. cit., paras. 179 and 184. The Committee noted that even if a number of countries were prepared to accept the innovative provisions of the Protocol, it seemed that they would still have serious objections to accepting the principle of the prohibition of night work for women in the terms used in the "mother" Convention No. 89.

<sup>17</sup> As of 10 October 2001, Convention No. 171 was ratified by six member States: *Belgium*, *Cyprus*, *Czech Republic*, *Dominican Republic*, *Lithuania* and *Portugal*.

<sup>18</sup> General Survey, op. cit., para. 184.

and to conclude that the harmful effects of night work should be regulated, if at all, for men and women alike.<sup>19</sup>

11. Bearing in mind that an increasing number of States had decided no longer to give effect to, or to denounce, Conventions Nos. 4, 41 or 89, while at the same time Convention No. 171 had not yet attracted many ratifications, the Committee stressed that there was a risk of removing all protective measures for women without replacing them with legislation offering appropriate protection to all night workers.<sup>20</sup> The Committee emphasized that the current trend towards easing or eliminating legal restrictions on women's employment and strengthening non-discrimination, while positive in itself, should not result in a legal vacuum with night workers being deprived of any regulatory safeguards.<sup>21</sup>
12. On balance, the Committee of Experts considered that Convention No. 89, as revised by the 1990 Protocol, retained its relevance for some countries as a means of protecting those women who needed protection from the harmful effects and risks of night work in certain industries, while acknowledging the need for flexible and consensual solutions to specific problems and for consistency with modern thinking and principles on maternity protection.<sup>22</sup> Thus, the Committee considered that "in addition to encouraging the ratification of Convention No. 171, greater efforts should be made by the Office to help those constituents who are still bound by the provisions of Convention No. 89, and who are not yet ready to ratify Convention No. 171, to realize the advantages of modernizing their legislation in line with the provisions of the Protocol".<sup>23</sup>

## Committee on the Application of Standards

13. In the discussion that took place in the Conference Committee on the Application of Standards several members took the view that Conventions Nos. 4 and 41 were obsolete and should be considered for shelving or abrogation,<sup>24</sup> while Convention No. 89, as revised by the 1990 Protocol, provided the possibility to strike a balance between the needs to ensure equality and to maintain appropriate social and working conditions for women workers, especially in developing countries.<sup>25</sup> It was also noted that the Office should

<sup>19</sup> General Survey, op. cit., para. 199. The Committee also noted that, despite differences in their approach, technically speaking, Convention No. 89, as revised by the 1990 Protocol, and Convention No. 171 were not mutually exclusive (para. 184).

<sup>20</sup> General Survey, op. cit., para. 202.

<sup>21</sup> General Survey, op. cit., para. 195.

<sup>22</sup> General Survey, op. cit., para. 201.

<sup>23</sup> General Survey, op. cit., para. 202.

<sup>24</sup> Report of the Committee on the Application of Standards, op. cit., paras. 192 and 196.

<sup>25</sup> Report of the Committee on the Application of Standards, op. cit., paras. 185, 189, 190, 191 and 192, 194. One Member noted that equality between male and female workers should have priority whereas protective standards on night work could only be justified where they could be applied in concrete situations and on a temporary basis (para. 187). Another Member noted that even though the instruments on night work of women were outdated and incompatible with the principle of equal opportunity, a global assessment of their validity should be avoided and that in view of the great

promote the ratification of Convention No. 89 and its Protocol in cases where member States were unable to ratify Convention No. 171.<sup>26</sup> Some Members insisted that the rationale behind the instruments on night work of women remained relevant in the light of social values in certain countries and the need to prevent situations in which women were subject to severe exploitation.<sup>27</sup> Several Members considered that all instruments on night work of women contravened the principle of equality of opportunity and treatment and therefore should be denounced by the States parties and withdrawn or abrogated by the Conference.<sup>28</sup> It was added that broader measures were needed to enable male and female workers to balance work and family life.<sup>29</sup>

## Remarks

14. Against the background of the previous examination by the Working Party and the General Survey of the Committee of Experts, it seems clear that Conventions Nos. 4 and 41 no longer make a valuable contribution to the objectives of the Organization. These Conventions could therefore be shelved with immediate effect. Convention No. 89, as revised by the 1990 Protocol, appears to retain an interim value for the reasons invoked by the Committee of Experts. It is therefore proposed to maintain the status quo with regard to this Convention. Moreover, Convention No. 171 is a recently adopted instrument and, as confirmed by the General Survey, is the modern and comprehensive standard regarding night work. Consequently, the following recommendations could be proposed to the Working Party.

## Proposals

15. Regarding Convention Nos. 4 and 41, *the Working Party might 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.*

diversity of national conditions and needs, each member State would have to find its own balance between special protective imperatives and considerations of equality (para. 183).

<sup>26</sup> Report of the Committee on the Application of Standards, op. cit., para. 197.

<sup>27</sup> Report of the Committee on the Application of Standards, op. cit., paras. 186, 188 and 189.

<sup>28</sup> Report of the Committee on the Application of Standards, op. cit., paras. 162, 164, 178, 181, 182, 183, 184, 193, 195, 204 and 205.

<sup>29</sup> Report of the Committee on the Application of Standards, op. cit., paras. 166 and 183.

**16.** 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.*

Geneva, 18 October 2001.

*Points for decision:* Paragraph 15;  
Paragraph 16.

## Appendix

### Previous examinations of the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41) and the Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990

#### *Excerpts from Governing Body documents*

#### **267th Session (November 1996) of the Governing Body**

GB.267/LILS/WP/PRS/2, Conventions in need of revision (second stage), pages 27-34

#### **V.3. C.4 – Night Work (Women) Convention, 1919 (No. 4)**

(1) *Ratifications:*

- (a) Number of current ratifications: 31.
- (b) Latest ratification: Rwanda, 1962.
- (c) Ratification prospects: Minimal. Despite having been revised, this Convention has not been closed to further ratifications. It was adopted before the introduction of the final Articles providing, in the absence of a contrary decision by the Conference, for the closure of the Convention to further ratifications upon the ratification by one State of the revising Convention.

(2) *Denunciations:*

- (a) Pure denunciations: 7.

	Ratification	Denunciation
Albania	1932	1964
Argentina	1933	1992
Bulgaria	1922	1960
Chile	1931	1976
Luxembourg	1928	1982
Malta	1988	1991
Portugal	1932	1993

*Reasons for denunciation:*

*Albania, Bulgaria:* No reasons given for denunciation.

*Argentina:* The limitation of the hours of work for women has become a veritable obstacle to the actual integration of women into the labour market.

*Chile:* Fifty-seven years after the adoption of this instrument, it is showing signs of rigidity. Its provisions are not only ill-adapted to the realities of our times but can also be considered, in particular, as discriminating against women by visibly prejudicing their possibilities of becoming fully integrated into the contemporary working world. Moreover, the text of the Convention unjustifiably restricts women's freedom to work, and is clearly out of touch with the development requirements of our country.

*Luxembourg:* Employers' and workers' industrial organizations and the most important women's associations in the country have made numerous representations to the Government to lift the ban on night work for women in industry, claiming that it hampers women's access to many professions

and occupations, and that it is no longer valid to maintain it since the concern to provide protection which originally inspired it no longer exists.

*Malta:* This decision was mainly taken because of the legal, economic and social difficulties that were caused by the ban on night work for women. Prohibiting women from working at night when they wish to do so is liable to be the subject of legal action on the grounds of gender discrimination.

*Portugal:* The provisions of the Convention no longer have any justification nowadays and even run counter to the principle of equality of treatment for men and women as regards access to employment, occupational training and promotion, and working conditions. An additional factor is the need to harmonize internal legislation and Community law in accordance with the interpretation given by the European Court of Justice.

- (b) Automatic denunciations: Twenty-one States denounced Convention No. 4 and subsequently ratified the Night Work (Women) Convention (Revised), 1934 (No. 41) or the Night Work (Women) Convention (Revised), 1948 (No. 89).
- (3) *Supervisory controls:* Comments by the Committee of Experts pending for three countries. In June 1996 the Governing Body adopted the report of the tripartite committee set up to consider a representation (under article 24 of the Constitution) concerning the application by Peru of Convention No. 41 in particular.
- (4) *Need for revision:* Convention revised partially by the Night Work (Women) Convention (Revised), 1934 (No. 41) Night Work (Women) Convention (Revised), 1934 (No. 41) (14 current ratifications as of 31 December 1995). The Night Work (Women) Convention (Revised), 1948 (No. 89), revised Conventions Nos. 4 and 41, and closed Convention No. 41 to ratification. As of 31 December 1995, Convention No. 89 had received 47 ratifications. In 1990, the International Labour Conference adopted the Protocol relating to Convention No. 89 (two ratifications as of 31 December 1995), and the Night Work Convention, 1990 (No. 171) (four ratifications).
- (5) *Remarks:* Convention No. 4 had been classified in the category of “other instruments” by the Ventejol Working Parties of 1979 and 1987. The States parties now have more up-to-date instruments on the subject of night work (Convention No. 89 and its Protocol and Convention No. 171). The Working Party could suggest to the 23 States<sup>22</sup> bound simultaneously by Convention No. 4 and Convention No. 41 and/or Convention No. 89 that they denounce Convention No. 4 in order to be assured of consistent coverage for the night work of women. In actual fact, the implementation of Conventions Nos. 41 and 89 implies in law and in practice that Convention No. 4 has become obsolete with regard to these. If the Working Party recommends that Convention No. 4 be shelved, the eight States parties<sup>23</sup> to Convention No. 4, which have not ratified either Convention No. 41 or Convention No. 89, should be invited to ratify the most recent instruments.
- (6) *Proposals:*
  - (a) The Working Party could propose that Convention No. 4 be shelved with immediate effect.
  - (b) It could recommend to the Governing Body that it invite the 23 States parties to Convention No. 4, which have ratified the Night Work (Women) Convention (Revised), 1934 (No. 41), or the Night Work (Women) Convention (Revised), 1948 (No. 89), to

<sup>22</sup> Thirteen States parties to Convention No. 4 have also ratified Convention No. 41. These States are as follows: Afghanistan, Benin, Burkina Faso, Central African Republic, Chad, Côte d’Ivoire, Gabon, Madagascar, Mali, Morocco, Niger, Peru, Togo. Ten other States parties to that Convention have also ratified Convention No. 89. These are: Angola, Austria, Bangladesh, Burundi, Guinea-Bissau, India, Pakistan, Rwanda, Senegal, Zaire.

<sup>23</sup> Cambodia, Colombia, Lao People’s Democratic Republic, Lithuania and Nicaragua; also Cuba, Italy and Spain. It should be noted that the last three States are in a special situation in that they have denounced Convention No. 89, but Convention No. 4 remains in force for them as it has not been denounced.

contemplate ratifying, as appropriate, Convention No. 89 and/or its Protocol of 1990 and denouncing Convention No. 4 at the same time.

- (c) It could recommend to the Governing Body that it invite the eight other States parties to Convention No. 4 to contemplate ratifying the Night Work Convention, 1990 (No. 171), or, where appropriate, the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, denouncing at the same time Convention No. 4.
- (d) It could recommend to the Governing Body that it invite the States parties to Convention No. 4 to provide it with information on the possible difficulties inherent in the Convention, legislation or national practice which could prevent or delay the ratification of Convention No. 171 or, where applicable, of Convention No. 89 and its Protocol of 1990.
- (e) The Working Party (or the LILS Committee) would re-examine the status of Convention No. 4 in due course.

#### V.4. C.41 – Night Work (Women) Convention (Revised), 1934 (No. 41)

(1) *Ratifications:*

- (a) Number of current ratifications: 17.
- (b) Latest ratification: Argentina, 1950 (also more recent ratifications by 15 other countries after they become independent, subsequent to the entry into force in 1951 of Convention No. 89 which closed Convention No. 41 to further ratifications; four of them subsequently ratified Convention No. 89).
- (c) Ratification prospects: Convention closed to any further ratification.

(2) *Denunciations:*

- (a) Pure denunciations: 3

	Ratification	Denunciation
Hungary	1936	1977
Myanmar	1935	1967
United Kingdom	1937	1947

*Reasons for denunciation:*

*Hungary:* The exclusion of women from night work is considered to be discriminatory, especially as regards wages and promotion at work.

*Myanmar and United Kingdom:* No reasons given for their decisions.

- (b) Automatic denunciations: Eighteen denunciations following the ratification of Convention No. 89.
- (3) *Supervisory procedures:* Comments by the Committee of Experts pending for six countries. Furthermore, the Governing Body adopted in June 1996 the report of the tripartite committee set up to consider a representation (under article 24 of the Constitution) concerning the application by Peru of Convention No. 41 in particular.<sup>24</sup>
- (4) *Need for revision:* The Night Work (Women) Convention (Revised), 1948 (No. 89), revised Conventions Nos. 4 and 41 and closed Convention No. 41 to ratification. In 1990, the International Labour Conference adopted the Protocol relating to Convention No. 89 (two ratifications as of 31 December 1995) and the Night Work Convention, 1990 (No. 171) (four ratifications).
- (5) *Remarks:* The Ventejol Working Parties of 1979 and 1987 had classified this Convention in the category of “other instruments”. Since the entry into force of Convention No. 89 in 1951, there have been 21 denunciations recorded of Convention No. 41, 18 of which have been automatic (see under Convention No. 4). At the March 1996 meeting, the Office proposed to

<sup>24</sup> Doc. GB.266/8/4, para. 20.

the Working Party that Convention No. 41 should be made dormant. At the request of the Worker members, the Working Party expressed their hope that a joint examination would be made of Conventions Nos. 4 and 41. The Working Party could suggest to the States parties to Convention No. 41 that they contemplate ratifying Convention No. 89 and its Protocol of 1990 or, where appropriate, of the Night Work Convention, 1990 (No. 171).

(6) *Proposals:*

- (a) The Working Party could propose the shelving of Convention No. 41 with immediate effect.
- (b) It could recommend to the Governing Body that it invite the States parties to Convention No. 41 to contemplate ratifying the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990 or, where necessary, ratifying the Night Work Convention, 1990 (No. 171) and denouncing Convention No. 41 at the same time.
- (c) It could recommend to the Governing Body that it invite the States parties to Convention No. 41 to provide it with information on the possible difficulties inherent in the Convention, legislation or national practice which could prevent or delay the ratification of Convention No. 89 and its Protocol of 1990 or, as appropriate, of Convention No. 171.
- (d) The Working Party (or the LILS Committee) would re-examine the status of Convention No. 41 at a subsequent meeting in the light of the information obtained by the Office.

**V.5. C.89 – Night Work (Women) Convention (Revised), 1948 (No. 89) and its Protocol of 1990**<sup>25</sup>

(1) *Ratifications:*

- (a) Number of current ratifications: 47 (two ratifications of the 1990 Protocol).
- (b) Latest ratification: Czech Republic and Slovakia, 1993.
- (c) Ratification prospects: The Convention and its Protocol are likely to receive further ratifications.

(2) *Denunciations:*

- (a) Pure denunciations: 15

	Ratification	Denunciation
Belgium	1952	1992
Cuba	1952	1991
France	1953	1992
Greece	1959	1992
Ireland	1952	1982
Italy	1952	1992
Luxembourg	1958	1982
Malta	1965	1991
Netherlands	1954	1972
New Zealand	1950	1981
Portugal	1964	1992
Spain	1958	1992

<sup>25</sup> The Protocol adopted in 1990 amends several provisions of Convention No. 89. Under the terms of article 4 of the Protocol, a Member may ratify the Protocol at the same time or at any time after its ratification of the Convention. However, a Member may not ratify the Protocol only without ratifying Convention No. 89. The ratification of the Protocol takes effect 12 months after its registration.

	Ratification	Denunciation
Sri Lanka	1966	1982
Switzerland	1950	1992
Uruguay	1954	1982

*Reasons for denunciation:*

*Cuba:* No reason given for denunciation.

*Belgium:* The Government decided to denounce Convention No. 89, undertake the ratification procedure for Convention No. 171 and prepare new legislation on night work.

*France:* It is solely for exceptional reasons associated with a serious risk of conflict among its international commitments that France has been led to denounce the Convention. A judgement by the Court of Justice of the European Communities (Stoeckel Case No. 345/89 of 25 July 1991) had in fact drawn attention to the incompatibilities between French legislation on night work and Directive No. 76/207/EEC concerning the equality of men and women in working conditions. The Commission of the Communities has called upon France to bring its legislation into conformity with Directive No. 76/207/EEC. This order is the first stage of a procedure which, if it continues, will lead to the reappearance of France before the Court of Justice of the European Communities, where a further adverse judgement seems to be inevitable. Consequently, France can no longer defer the amendment of its legislation and by the same token it cannot fail to denounce Convention No. 89 on the night work of women in industry.

*Greece:* As the Government has committed itself to bring its national legislation into harmony with European Community law, it is required to denounce Convention No. 89 in order to adapt Greek legislation to the provisions of Directive No. 76/207/EEC, which applies the principle of equality of treatment between men and women in employment opportunities, occupational training and promotion, and working conditions.

*Ireland:* Since the adoption of the Convention the situation has changed, and the prohibition on the employment of women for night work now constitutes an inadmissible discrimination against working women.

*Italy:* The Court of Justice of the European Communities has given its formal opinion on the question of night work for women in industry. In order to make its regulations compatible with those of the European Community, the Italian Government decided to renounce Convention No. 89.

*Luxembourg:* The professional organizations of employers and workers and the most important women's associations in the country have called upon the Government on numerous occasions to remove the prohibition on the night work of women in industry, claiming that it hampers the access of women to a great many professions and occupations and that its maintenance has ceased to be acceptable since the concern for protection that originally inspired it no longer exists.

*Malta:* This decision was taken mainly because of the legal, economic and social difficulties that were caused by the prohibition of night work for women. This refusal to allow women to work at night if they wish to do so is liable to be the subject of legal action on the grounds of discrimination between the sexes.

*Netherlands:* The absolute prohibition imposed by the Convention has proved to be an impediment to any discussion of night work for women. However, this question must now be reviewed in relation to the efforts made to bring about the complete integration of women into the production process in the Netherlands. The purpose of the denunciation is to prevent a situation from being created in which it would be impossible for many years to come to modify this state of inequality in any way as a result of the obligation deriving from Convention No. 89.

*New Zealand:* It is considered that to prohibit night work in factories while ignoring other forms of night work that are intrinsically dangerous, such as police work, the work of nursing personnel, and public transport services, constitutes a discrimination rather than a protection and is contrary to the spirit of the Law of 1997 on the Commission on Human Rights, which was adopted to enable New Zealand to ratify international covenants on human rights.

*Portugal:* There is no longer any justification for the provisions of the Convention which may even be prejudicial for the firm establishment of the principle of equality between the sexes in employment, professional and vocational training and promotion, and conditions of work.

Moreover, it is necessary to harmonize internal laws and Community law as it has been interpreted by the Court of Justice of the European Communities.

*Spain:* The provisions of the Convention run counter to the Spanish Constitution of 1978 which states as a fundamental right “the prohibition of any kind of discrimination ... based on gender”, a provision that is expanded upon in the Workers’ Charter, which places strict insistence on the prevention of all discrimination based on gender in relations in the workplace.

*Sri Lanka:* The ratification of the Convention is an impediment to the employment of women on night work in a third shift. The present situation as regards women in employment is very different from that which prevailed at the time when the Convention was ratified by Sri Lanka. Various national organizations representing the rights of women have pointed out that the legislation in question discriminates against those rights and acts as a constraint that makes it difficult for women to have an equal opportunity of obtaining employment.

*Switzerland:* Switzerland needs a margin of manoeuvre in order to adapt its labour laws to the development of the national and international situations. By denouncing the Convention, it frees itself of a long-term obligation which is of concern only to industry and the women employed in it. Switzerland’s main economic competitors, notably the Member States of the European Community, are not bound by this Convention or are in the process of ridding themselves of their obligations. To renounce the denunciation of the Convention would hinder the efforts that are being made to improve the structural conditions of the economy of Switzerland and the attraction of the Swiss market-place, and would thereby prejudice the country’s international competitiveness.

*Uruguay:* National labour law is characterized by the protection it affords to women at work. Although at the time the protective legislation was adopted it was in accordance with the cultural concepts that had evolved over the centuries in the majority of societies, at the present time the result of technological and scientific developments, together with the extension of education and vocational training, among other reasons, have been to transform the explicit intention in the past to protect women against exhausting and dangerous work into a factor of discrimination in the present-day world that limits women’s opportunities to obtain employment.

- (b) Automatic denunciations: Not applicable.
- (3) *Comments by the Committee of Experts:* Comments pending for 20 countries, comprising observations by three workers’ organizations.
- (4) *Need for revision:* A Protocol to Convention No. 89 was adopted in 1990 (two ratifications as of 31 December 1995). The Night Work Convention, 1990 (No. 171) (four ratifications as of 31 December 1995), establishes measures of protection for night work in general without revising Convention No. 89.
- (5) *Remarks:* The instruments on night work of 1990 (Protocol to Convention No. 89, Convention No. 171 and Recommendation No. 178) envisage different possibilities of assuring protection for night work in accordance with the requirements of a modern economy.
- (6) *Proposals:*
  - (a) The Working Party could recommend to the Governing Body that it invite the States parties to Convention No. 89 to contemplate ratifying the Protocol of 1990 to that Convention or, where appropriate, ratifying the Night Work Convention, 1990 (No. 171), and to inform the Office of the obstacles and difficulties encountered that might prevent or delay the ratification of these instruments.
  - (b) The Working Party (or the LILS Committee) would re-examine the status of Convention No. 89 and its Protocol of 1990 at a subsequent meeting in the light of the information obtained by the Office.

GB.267/9/2, Appendix III, GB.267/LILS/4/2 (Rev.), Report of the Working Party on Policy regarding the Revision of Standards, paragraphs 44-49

#### C.4 Night Work (Women) Convention, 1919 (No. 4)

- 44. The Worker members emphasized the need to promote the ratification of the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, especially in the

case of countries that have ratified Conventions Nos. 4 and 41. They were against the shelving of these two Conventions with immediate effect.

45. The Employer members were in favour of shelving Conventions Nos. 4 and 41 with immediate effect and promoting the ratification of Convention No 171. They also requested a more detailed survey of national law and practice in this area. Finally, they observed that Convention No. 89 had received a large number of denunciations.
46. A representative of the Direct-General recalled that no general survey had been conducted on the instruments concerned with the night work of women, and suggested that the Office might submit such a proposal to the LILS Committee, if the Working Party so wished.
47. *The Working Party proposes:*
  - (a) *to recommend to the Governing Body that it invite the 23 States parties to Convention No. 4 which have ratified the Night Work (Women) Convention (Revised), 1934 (No. 41), or the Night Work (Women) Convention (Revised), 1948 (No. 89), to examine the possibility of ratifying, as appropriate, Convention No. 89 and/or its Protocol of 1990 and denouncing Convention No. 4 at the same time;*
  - (b) *to recommend to the Governing Body that it invite the eight other States parties to Convention No. 4 to contemplate ratifying the Night Work Convention, 1990 (No. 171), or, where appropriate, the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, denouncing at the same time Convention No. 4;*
  - (c) *to recommend to the Governing Body that it invite member States to submit reports under article 19 of the Constitution and ask the Committee of Experts to conduct a general survey on the subject;*
  - (d) *that the Working Party (or the LILS Committee) contemplate shelving Convention No. 4 in due course.*

#### C.41 Night Work (Women) Convention (Revised), 1934 (No. 41)

48. *The Working Party proposes:*
  - (a) *to recommend to the Governing Body that it invite the States parties to Convention No. 41 to contemplate ratifying the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990, or, as appropriate, ratifying the Night Work Convention, 1990 (No. 171), and denouncing Convention No. 41 at the same time;*
  - (b) *to recommend to the Governing Body that it invite the States parties to Convention No. 41 to inform the Office of the possible difficulties inherent in the Convention, legislation or national practice which could prevent or delay the ratification of Convention No. 89 and its Protocol of 1990 or, as appropriate, of Convention No. 171;*
  - (c) *to recommend to the Governing Body that it invite member States to submit reports under article 19 of the Constitution and ask the Committee of Experts to conduct a general survey on the subject;*
  - (d) *that the Working Party (or the LILS Committee) contemplate shelving Convention No. 41 in due course.*

#### C.89 Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990

49. *The Working Party expressed its agreement with the Office's proposals.*

*It proposes:*

- (a) *to recommend to the Governing Body that it invite the States parties to Convention No. 89 to contemplate ratifying the Protocol of 1990 to that Convention or, where appropriate, ratifying the Night Work Convention, 1990 (No. 171), and to inform the Office of the obstacles and difficulties encountered that might prevent or delay the ratification of these instruments;*

- (b) *to recommend to the Governing Body that it invite member States to submit reports under article 19 of the Constitution and ask the Committee of Experts to conduct a general survey on the subject;*
- (c) *that the Working Party (or the LILS Committee) re-examine the status of Convention No. 89 and its Protocol of 1990 at a subsequent meeting in the light of the information obtained by the Office.*

GB.267/9/2, Reports of the Committee on Legal Issues and International Labour Standards, Second Report: International labour standards, I. Report of the Working Party on Policy regarding the Revision of Standards, paragraph 14

14. *The Committee recommends that the Governing Body –*

- (a) *take note of the part of the report of the Working Party on Policy regarding the Revision of Standards concerning Conventions in need of revision (Phase 2);*<sup>3</sup>
- (b) *approve the proposals that met with a consensus in the Working Party, namely: ...*
  - (ii) *the request for a general survey under article 19 of the Constitution (see paragraphs ..., 47-49 ...), concerning: ...*
    - night work of women: Conventions Nos. 4, 41, 89, and its Protocol of 1990; ...*
  - (iii) *the proposals to promote the ratification of updated Conventions (Nos. ..., 89 and its Protocol of 1990; ...) and, as appropriate, to denounce the earlier Conventions (Nos. 4, ..., 41, ... (see paragraphs ..., 47, 48, ... of the report of the Working Party);*
  - (iv) *the requests to States parties for information and/or consultations in respect of Conventions Nos. ..., 89 and its Protocol of 1990, ..., 171 ... (see paragraphs ..., 47-49, ...);*

<sup>3</sup> GB.267/LILS/4/2, as amended and appended to the present report as GB.267/LILS/4/2(Rev.).