



FIRST ITEM ON THE AGENDA

Possible improvements in the standard-setting activities of the ILO**(b) Final provisions of the international labour Conventions****I. Introduction**

1. The present document follows on from Governing Body document GB.286/LILS/1/1. It examines the third topic concerning possible improvements in the standard-setting activities of the ILO that the Governing Body wished to examine more in detail during the present session, in a separate discussion in the Committee on Legal Issues and International Labour Standards.¹
2. The ILO Constitution does not contain any provisions relating to the conditions of ratification, entry into force, denunciation, notification of ratifications to Members and revision of international labour Conventions. These issues are determined in the final provisions or final clauses² in the final Articles³ of each Convention. The ILO has generally used standard provisions reproduced without substantial modification in the final Articles of each new Convention. These standard provisions have been adopted as such by the International Labour Conference.

¹ GB.283/4, para. 41, and GB.283/205, para. 7.

² The expressions “final provisions” and “final clauses” are perfectly synonymous when used with regard to the Conventions, the former being, however, better established in ILO terminology as it is used in many Conventions as the title of the part containing the provisions in question. In the history of the ILO, the expressions “procedural clauses”, “formal clauses” and “standard Articles” have also been used but were subsequently discarded.

³ An expression used in the Final Articles Revision Convention, 1946 (No. 80), and the Final Articles Revision Convention, 1961 (No. 116), an “Article” being able to include several “provisions” or “clauses” relating to various issues.

3. The use of standard clauses for all international labour Conventions dates back to the First Session of the International Labour Conference in 1919.⁴ The Conference Drafting Committee had drawn up proposed “procedural clauses” that it recommended to incorporate into proposed Conventions adopted by the Conference at the session in progress and in the future.
4. The standard final provisions in their current form date back, for the most part, to the 11th Session (1928) of the Conference.⁵ At this session, the Conference adopted six proposed final Articles, drawn up on the basis of previous experience by previous practice the Standing Orders Committee, which related to the following subjects: (a) ratification; (b) entry into force; (c) notification of ratifications to Members; (d) denunciation; (e) report and consideration for revision by the Governing Body; and (f) authentic texts. A seventh Article concerning the effects of a possible revision of a Convention was introduced in 1929⁶ before taking its existing form in 1933.⁷ At its 29th Session (1946),⁸ the Conference introduced to the standard final Articles concerning ratification and denunciation procedure the changes made necessary by the dissolution of the League of Nations, the functions assumed by the United Nations with regard to deposit of treaties and international agreements and the amendments to the Constitution subsequent to this. On this occasion, an eighth final Article concerning the notification of ratifications to the Secretary-General of the United Nations was introduced. Finally, in 1951, the Article concerning the issue of revision was modified to its current form.⁹
5. These provisions were subsequently introduced into the new Conventions. When the proposed standard final provisions were adopted by the Conference in 1928, it had in effect been indicated that the Articles adopted would be sent to the Drafting Committees of subsequent sessions of the Conference appointed to prepare the final text of Conventions, on the understanding that each Article in itself would become definitive only when the Conference had voted with the two-thirds majority required. It was nonetheless specified that certain “standard clauses” that had been used in the past, in particular those concerning entry into force and denunciation, were really clauses of substance that should be examined by the competent committee.¹⁰ Moreover, as shall be seen further on, each of the standard provisions concerned has been adopted using wording that leaves a certain number of parameters open, such as the number of ratifications necessary for Conventions to come into force and the length of the various intervals relating to denunciation. This

⁴ ILO: *Record of Proceedings*, International Labour Conference, First Session, Washington, 1919, pp. 175-176 and 218.

⁵ ILO: *Record of Proceedings*, International Labour Conference, 11th Session, Geneva, 1928, Vol. I, pp. 299-310 and 591-612.

⁶ ILO: *Record of Proceedings*, International Labour Conference, 12th Session, Geneva, 1929, Vol. I, pp. 770-771.

⁷ ILO: *Record of Proceedings*, International Labour Conference, 17th Session, Geneva, 1933, pp. 312 and 500-501.

⁸ ILO: *Record of Proceedings*, International Labour Conference, 29th Session, Montreal, 1946, pp. 216 and 385-386.

⁹ ILO: *Record of Proceedings*, International Labour Conference, 34th Session, Geneva, 1951, pp. 243-244 and 517-518.

¹⁰ ILO: *Record of Proceedings*, International Labour Conference, 11th Session, Geneva, 1928, Vol. I, pp. 300-301.

“open” wording was kept in the proposed standard final provisions adopted by the Conference in 1946.¹¹

6. The systematic use of the standard final clauses adopted by the Conference has seen two sets of significant exceptions: first, the Article concerning entry into force was significantly modified in certain Conventions on maritime labour adopted since 1936; and second, the final provisions of the five Protocols adopted since 1982 diverge on certain points from the standard final Articles owing to the specific legal nature of the Protocols characterized by their attachment to another Convention.
7. Once included in a Convention, the final provisions, similar to any other provision in a Convention, can only be modified by means of a revision of the Convention of which they form part. However, to compensate for this difficulty, the Organization adopted, in 1946 and 1961, respectively, Conventions Nos. 80 and 116 concerning revision of the final Articles of previous Conventions in order to unify the regime applicable to the Conventions following the adoption of new standard final clauses.

II. The adoption of the final provisions

8. When the possible adoption of a Convention is placed on the agenda of a session of the Conference, the Conference instructs a technical committee to draw up a proposed Convention from the text submitted by the Office. Following well-established practice, the Articles containing the final provisions are added by the Conference Drafting Committee¹² to the proposed Convention attached to the committee’s report. The proposed Convention, thus completed, is submitted to a final vote at the plenary session of the Conference. The Drafting Committee uses, in general, the standard final provisions in their most recent version and introduces, if necessary, the changes required by the nature of the Convention concerned. In the absence of any indication on the part of the technical committees, the Drafting Committee usually refrains from making any changes to the parameters left open in the standard final clauses adopted by the Conference.
9. The insertion of the final clauses by the Drafting Committee is justified by two considerations: one legal and one practical. First, from the legal point of view, the fact that the Drafting Committee takes care to subject the Conventions, as much as possible, to the same rules of operation, drawn up in identical terms, strengthens the coherence of the ILO body of standards as a whole and facilitates its legibility. Second, from the practical point of view, a discussion of the final provisions by the technical committee would add to its workload, which is already considerable given the limited duration of the Conference, and would risk giving rise to serious scheduling problems.
10. This being said, it should be recalled that it is always feasible for the technical committees of the Conference to refer certain questions to the Drafting Committee so long as the latter do not have to decide on questions of substance but only on questions of form. As with questions concerning the drafting of amended Articles, the committees can indicate a choice with regard to the parameters left open by the standard final provisions.

¹¹ ILO: *Record of Proceedings*, International Labour Conference, 29th Session, Montreal, 1946, pp. 385-386.

¹² In accordance with article 6 of the Standing Orders, the Conference Drafting Committee consists of at least three persons who need not be either delegates or advisers.

III. The current standard final provisions

11. The standard final provisions currently in use are annexed.

A. Provisions relating to the entry into force of a Convention

12. As indicated previously, the standard final Article as adopted by the Conference leaves certain parameters open, indicated in square brackets, as follows.

Article B

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force [12] months after the date on which the ratifications of [two] Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member [12] months after the date on which its ratification has been registered.

13. The first paragraph is a reminder of what is already stated in article 19, paragraphs 5(d) and (e) of the Constitution of the International Labour Organization, i.e. that a Member of the Organization is only obliged to give effect to the provisions of a Convention if it has ratified it. But, in order for a Convention to create obligations for a Member it must also have come into force with regard to that Member. The standard final Article distinguishes between two phases of coming into force:

- First, initial or “objective” entry into force of the Convention with regard to the Organization, which constitutes the starting point of the time limits for denunciation and starts the obligations (and rights) under articles 22, 24 and 26 of the Constitution. It leads to entry into force of the Convention with regard to the Members that have already ratified it (paragraph 2).
- Second, the “subjective” entry into force, on an individual level, with regard to each Member which ratifies the Convention subsequent to its initial entry into force (paragraph 3).

14. The standard final provision in Article B, paragraph 2, allows the implementation of three types of parameters that can be combined: (a) the number of ratifications necessary for entry into force; (b) the stipulation of the Members whose ratifications are necessary for entry into force; and (c) the interval before the Convention comes into force.

15. (a) *Number of ratifications necessary for entry into force* – During the discussions on international labour standards that took place at the 81st Session (1994) of the International Labour Conference and at the 261st Session (November 1994) of the Governing Body,¹³ the problems of ratification of Conventions were high on the agenda, in view of what was perceived as stagnation in the number of ratifications. Among the difficulties mentioned were the conditions of entry into force and denunciation of Conventions that might have a dissuasive effect. Some Government representatives, as well as the Employer members of the Committee on the Application of Standards, considered that the current practice, which

¹³ GB.261/LILS/3/1, para. 34, and GB.261/5/27.

provided for entry into force of a Convention after two ratifications, set too low a threshold and, consequently, should be raised. Some years earlier, in 1987, the report of the second Working Party on International Labour Standards, chaired by M. Ventejol, reported proposals from employers and supported by certain governments tending towards an increase in the number of ratifications necessary for initial entry into force of Conventions and a reduction in the intervals at which ratified Conventions may be denounced.¹⁴ The question of entry into force has, in fact, been raised since the 11th Session of the Conference in 1928.¹⁵ Previous practice having always been, with one exception,¹⁶ that Conventions come into force following the registration of two ratifications; an Employer delegate proposed to increase this number markedly, the objective being to give the first State to ratify the Convention the guarantee that they would not have to apply the Convention before a sufficient number of other countries with which they competed were similarly committed. Without adopting any position of principle on the subject of these proposals, the Conference considered that the decision on the number of ratifications necessary should be taken on a case-by-case basis at each session of the Conference, taking into account the nature of the Convention concerned. That is why the standard final clause was adopted with wording leaving open the number of ratifications required. The threshold of two ratifications has nevertheless been used for all Conventions, with the notable exception of 18 of the 39 Conventions relating to maritime labour. The number of ratifications necessary for entry into force of these Conventions is between five and 12, depending on the case.¹⁷

16. A brief examination of the various international treaties adopted by, or under the aegis of, other international organizations with a universal mandate shows no uniform practice with regard to the number of ratifications necessary for their entry into force. The conventions adopted by the United Nations only come into force after ten, 20 or 35 ratifications, but the 1951 Convention relating to the Status of Refugees, for example, needs only six ratifications. UNESCO calls for three, but also for 12 or 20, ratifications and the FAO varies between three and 40. The entry into force of Conventions after two ratifications is the formula reserved, for example, for the four Geneva Conventions of 1949 concerning international humanitarian law and the two Additional Protocols of 1977.
17. With regard to principles, one could ask if a higher number of ratifications for entry into force of international labour Conventions might not be in accordance with the statement in the Preamble to the Constitution that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”. But, it could be argued that it would not necessarily be in accordance with the spirit of the text to set a threshold of ratifications that would delay entry into force for Members who wished to be bound earlier. In fact, the practice of setting the threshold of entry into force at two ratifications, which represents the minimum for an international treaty to have effects between parties, seems to indicate the will to allow the most rapid entry into force possible of Conventions, thereby allowing the

¹⁴ ILO: *Report of the Working Party on International Labour Standards: Official Bulletin*, Vol. LXX, Series A, 1987, Special Issue, Appendix I, paras. 7 and 52.

¹⁵ See footnote 5.

¹⁶ Unemployment Convention, 1919 (No. 2), provided for entry into force after the third ratification.

¹⁷ Twelve ratifications were necessary for Convention No. 133; ten for Convention No. 147; nine for Conventions Nos. 68, 69, 72, 76, 91, 93 and 109; seven for Conventions Nos. 70, 73, 75 and 92; and five for Conventions Nos. 54, 57, 71 and 180, and for the Protocol to Convention No. 147.

workers of the countries ready to bind themselves to benefit from the protection of the Convention as early as possible. It could also be said that two ratifications no longer constitute sufficient approval of a Convention by governments in an Organization that today has 175 member States compared to, for example, 55 in 1928, and that it is not appropriate to put the supervisory mechanism of the ILO at the disposal of such a small minority of Members. On the other hand, the advantage in this context of a rapid entry into force is that, besides the protection that it grants the citizens of the countries that have ratified the Conventions, the examination of an application “in real life” by the supervisory mechanism could encourage those States that had yet to consider ratification.

18. The existence of a significant number of Conventions that had not come into force owing to the increase in the number of ratifications required would have an effect on the normative system. The possible effect of such an increase on the date of entry into force of Conventions can be understood by examining the dates of ratification of the 26 Conventions (including one Protocol) adopted in the past 20 years that have come into force after the second ratification. If these Conventions had called, for example, for six ratifications for their entry into force, it would have delayed this, on average, by just over two years, and four Conventions currently in force would not be so today. With a threshold of 12 ratifications, the average delay would be four years and four months, and 14 of the 26 Conventions in question would still not have come into force.
19. (b) *Stipulation of the Members whose ratifications are necessary for entry into force* – A certain number of ILO Conventions require not only the registration of a specific number of ratifications but also that a certain number of these ratifications come from specific Members for a Convention to come into force. The relevant provisions of Conventions Nos. 31, 46 and 110, as well as 12 of the 18 Conventions on maritime labour mentioned earlier, specify that the ratifications counted to reach the threshold of ratifications required for entry into force should come from Members appearing among the countries listed.¹⁸ Moreover, in the case of the maritime Conventions, a certain number of ratifications must come from countries with a significantly large merchant fleet, measured in gross tonnage, the threshold being most often set at 1 million tons. In certain cases, a provision specifies the objective of these requirements in the following terms: “the provisions of the preceding paragraph are included for the purpose of facilitating and encouraging early ratification of the Convention by member States”.¹⁹
20. A list of countries designated by name can only be established for a specific Convention if the objective is to ensure that the Convention will be ratified by a minimum number of countries that are among those most concerned by the regulations laid down in the Convention. This is obvious if it is taken into account that a Convention can have an impact on a relatively weak, or even non-existent, industrial sector in many countries such as the maritime sector or plantations. This holds for all stipulations based on the industrial importance of Members in a particular sector. Provisions laying down such conditions can only, therefore, be adopted on a case-by-case basis, taking into account the aim of the Convention concerned, and would therefore not appear in the standard final Articles.
21. (c) *Interval before the Convention comes into force* – The period of time between registration of the last ratification necessary for entry into force and effective objective or subjective entry into force of the Convention is currently set at 12 months in the standard

¹⁸ For example, Convention No. 31 requires the ratifications of two countries from a list of seven, Convention No. 109 – the ratifications of nine countries from a list of 27 and Convention No. 110 – the ratifications of two countries from a list of 40.

¹⁹ See, for example, Article 27, para. 3, of Convention No. 109.

final provisions. The first Conventions adopted by the Organization provided for their immediate entry into force from the date of the registration of the last ratification required. In 1927, an interval of 90 days was introduced so that all Members who had ratified the Convention could be informed in advance of the date of its objective entry into force. Subsequently, an interval of 12 months was adopted as a final clause by the International Labour Conference in 1928, in order to give States additional time to adapt national legislation to the provisions of the Convention. This interval appears in the final clauses of all Conventions adopted from that time on, with the exception of Conventions Nos. 31 and 110, and a dozen or so Conventions on maritime labour where the interval is six months.²⁰

22. The 12-month interval seems never to have been questioned since its introduction in the standard final provisions. With regard to the justification of this interval given in 1928, it is recalled that a country has complete freedom of choice with regard to the date on which it ratifies a Convention. It is therefore usually possible for that country to ensure that its national legislation is in accordance with the provisions of the Convention even before proceeding to ratification.

B. Provisions relating to denunciation of a Convention

23. Denunciation is the act whereby a Member may terminate its obligations under a Convention it has ratified, as well as its constitutional obligations with respect to that Convention. A distinction should be made between two types of denunciation: first, those resulting automatically from the ratification of a Convention revising an earlier Convention, in accordance with Article G, paragraph 1(a), of the current standard final provisions; and second, “pure” denunciations by means of an act of denunciation communicated to the Director-General of the International Labour Office. Only the latter type of denunciation will be discussed here. The provision now in use is worded as follows (square brackets indicate the parameters left open by the Conference):²¹

Article C

1. A Member which has ratified this Convention may denounce it after the expiration of [ten] years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until [one year] after the date on which it is registered.

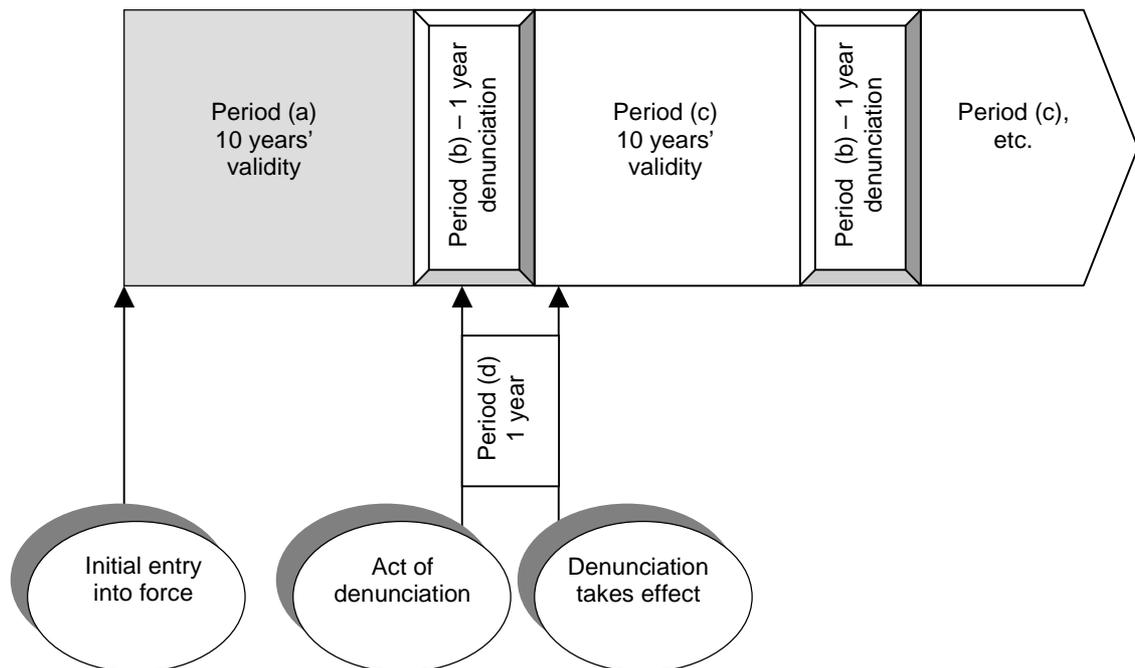
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of [ten] years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of [ten] years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

24. This Article provides for a number of time periods: (a) an initial period of validity of the Convention, reckoned from the date on which it first enters into force; (b) the period during which it may be denounced; (c) a third period during which a Convention remains in force if it has not been denounced, at the end of which the denunciation-validity cycle is repeated, all of which creates a system of “windows” during which denunciation may take

²⁰ Convention No. 133 is a particular case among the exceptions as it is the only one to distinguish between initial entry into force (after 12 months) and individual entry into force after initial entry into force (six months).

²¹ ILO: *Record of proceedings*, International Labour Conference, 29th Session, Montreal, 1946, pp. 385-386.

place; and (d) a period of “notice” between the date on which denunciation is registered and the date on which it takes effect. This system may be illustrated graphically as follows:



25. In ILO practice, the duration of period (a) has generally been ten years, or exceptionally five, from the date on which the Convention first comes into force. Once this period has elapsed, Conventions adopted between 1919 and 1927 may be denounced at any time. In 1928, considering that offering States this possibility introduced an element of precariousness in the system of mutual obligations established by Conventions, the Conference established the principle of the denunciation-validity cycle (periods (b) and (c)), leaving open the question of the duration of the initial and subsequent periods of validity. Barring exceptions, the duration of the denunciation period (b) has been one year, while period (c) was fixed at ten years in most cases after 1933. Before that date, some Conventions fixed it at five years. Lastly, the duration of the notice period (period (d)) has invariably been one year, from 1919 to the present.
26. Between 1938, the date of the first denunciation, and the end of 2002, the number of “pure” denunciations totalled 116, of which 21 were for the Night Work (Women) Convention (Revised), 1948 (No. 89), which makes it the Convention with the most denunciations. None of the fundamental or priority Conventions has been denounced, except for two cases of denunciation of the Abolition of Forced Labour Convention, 1957 (No. 105),²² and one of the Labour Inspection Convention, 1947 (No. 81), which the Member concerned subsequently ratified again.
27. Following the discussions held at the Conference and in the Governing Body in 1994,²³ the question of the time periods for denunciation was again discussed at the next session of the Governing Body (262nd Session, March-April 1995).²⁴ The Employer members

²² One in 1979 and the other in 1990.

²³ See para. 15 above.

²⁴ Documents GB.262/LILS/3, paras. 30-31, and GB.262/9/2.

considered that the lengthy periods when denunciation was not possible discouraged ratification and advocated a review of the duration of period (c) in the light of the practice in other international organizations, although not with respect to the Conventions on fundamental rights. This view was supported by several Government members, some of whom even considered that a review of the conditions for denunciation should be a matter of priority, while the Workers drew attention to the relatively low number of “pure” denunciations registered in the past, from which they deduced that there was no reason to ease the conditions for carrying them out.

28. A look at the practice in other organizations shows that different types of denunciation clause are used: often denunciation is not subject to any condition save a period of notice (most commonly 12 months); the possibility of denouncing an instrument at any time generally follows an initial period of validity during which denunciation is not allowed; and a system of periods of denunciation comparable to that used in the ILO is to be found, for example in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which provides for an initial ten-year period of validity followed by subsequent five-year periods of validity.
29. The final Article in question contains a number of parameters as to time periods. It might be interesting to consider the possibility of “individualizing” the time periods by counting them from the date of the subjective entry into force of the Convention or introducing in the standard final provisions a clause allowing the application of the Convention to be suspended.
30. (a) *Duration of the different periods* – Firstly, the different time periods that make up the system of “windows” of denunciation, intended to ensure a certain degree of stability of standards, are “open” parameters. In the case of the initial period of validity, the ten-year period was considered necessary to enable an initial evaluation to be made of the functioning of a Convention, given that ILO Conventions apply to the social and labour sphere, where the impact of new regulation often is only visible after a long period of application. In the case of the period of validity between the “windows” of denunciation, it is intended to provide adequate legal security for ratifying States as regards relations between States and for the workers in the countries concerned.
31. (b) *Individualized time periods* – The current system does not in fact fully achieve the intended purpose of obliging States to apply a Convention for a minimum period before being able to denounce it in full knowledge of the facts, since a State that ratifies the Convention shortly before the end of the initial period of validity could denounce it soon afterwards, without having had time to evaluate its effects fully. This would not be the case if the same system of “windows” of denunciation were applied for each member State separately, counting from the date on which the Convention enters into force for that country. One disadvantage of this would be that a State would no longer be able to react to a denunciation by a perceived competitor in the field covered by the Convention by immediately denouncing it itself. However, such denunciation “in reaction” is not always possible either under the current system when a Member denounces the Convention on the last days of the denunciation period.
32. (c) *Introduction of provisions concerning suspension of application* – Some Conventions adopted between 1919 and 1949 provide that the operation of their provisions may be suspended in exceptional circumstances, for example in the event of war, emergency endangering national safety or in cases of serious emergency when the public interest

demands it.²⁵ The main difference between suspension and denunciation is that the former is not definitive. Once the circumstances justifying it have ceased to exist, all of the member State's obligations under the Convention are resumed. Except for the "flexibility clauses" incorporated in certain Conventions, the current system does not provide for a middle way between permanent validity and definitive denunciation of a Convention; it is an "all or nothing" situation. In order to afford Members the possibility of being released from their obligations under a Convention which they are unable to discharge at a given time without having to denounce it, it might be envisaged to provide for suspension of the operation of the Convention's provisions in certain circumstances. In order to ensure that governments avail themselves of this possibility under verifiable conditions, such suspension should be subject to specific conditions as regards the grounds for the decision to suspend operation and the permitted duration of the suspension. Since this would still concern the application of ratified Conventions, the ILO supervisory bodies could examine the conditions in which the suspension takes place.

C. Provisions concerning revision

33. The standard final provisions contain two Articles on the revision of Conventions. The first of these, Article F, provides that the Governing Body shall, at such times as it may consider necessary, present a report on the working of the Convention and examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part. Unlike the provisions contained in Conventions adopted before 1951 but subsequently amended,²⁶ which required the Governing Body to present such a report every ten years at least, this provision leaves it to the Governing Body to choose the timing of its report. The second provision, Article G, provides for the consequences of revision of the Convention by the adoption of a new Convention. In this case, ratification by a Member of the new revising Convention shall *ipso jure* – i.e. automatically and without the need for a special declaration to that effect – involve the immediate denunciation of the revised Convention. Moreover, unless otherwise provided, the earlier Convention shall cease to be open to ratification.
34. At the 276th Session (November 1999) of the Governing Body, the Working Party on Policy regarding the Revision of Standards held a preliminary discussion on methods of revision on the basis of a paper presented by the Office.²⁷ In addition to the conventional method of adopting new revising Conventions or Protocols, that document recalls that certain Conventions provide for the adoption of amendments. The Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83), and the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), provide for this possibility with regard to their Schedules. On condition that the item is included in its agenda, the Conference may adopt such amendments by two-thirds majority – the same as the majority required for the adoption of Conventions and Recommendations. As of the date on which such an amendment is adopted, only the amended version of the Convention, in principle, is open to ratification by Members. In the case of Members who have already ratified the Convention, the amendment shall take effect on the date on which it is accepted.
35. The advantages of this amendment method, which is standard practice in several other international organizations, are manifold. In the first place, the amendment does not create

²⁵ Conventions Nos. 1, 6, 30, 61 and 94.

²⁶ By the Final Articles Revision Convention, 1961 (No. 116).

²⁷ Document GB.276/LILS/WP/PRS/2. See also document GB.276/LILS/5(Rev.1).

a new instrument that is superimposed on the original Convention; the amended text entirely replaces the original text for the Members who accept the amendment or ratify the Convention after the amendment comes into force. The amended Convention thus keeps its identity, its number and, most importantly, its “capital” of ratifications. In the second place, while acceptance of an amendment is a clear expression of a Member’s consent to be bound by it, it might not require the same formalities – depending on the applicable procedures in each country – which could speed up widespread application of the amended text. Lastly, like Protocols, amendment is a means of introducing limited changes without having to adopt a new Convention. The undeniable disadvantage of amendment is that it gives rise to a duality of applicable regulations between the Members which have accepted it and those that have not. Such duality also results from the adoption of Protocols or even revising Conventions when it does not entail the denunciation of the original Convention, but in this case it is more visible than in the case of the amendment procedure.

36. It would thus be possible to envisage the introduction of an amendment clause similar to that in Conventions Nos. 83 and 121 in the standard final provisions for use in future Conventions. Contrary to the case of the latter Conventions, such a provision would not be limited to specified Schedules of a Convention but would refer to the provisions concerning the implementation of the rights and obligations under the Convention. The Governing Body and the Conference would determine whether in a given case revision would take the form of an amendment, a Protocol or a new Convention. In any event, the amendment method would be available to the Organization as a flexible means of updating its instruments.

D. Provisions relating to the depositary function of the Director-General and the Secretary-General of the United Nations

37. Standard final Articles A, D and E were given their current form in 1946,²⁸ following the dissolution of the League of Nations and in particular of the decision to transfer to the Director-General of the International Labour Office and the Secretary-General of the United Nations the depositary functions previously carried out by the Secretary-General of the League of Nations.²⁹ The provisions of Articles A and D supplement article 19, paragraph 4, of the Constitution, which provides that the Director-General, as depositary of Conventions, will communicate a certified copy of the Convention to each of the Members. According to Article A, the depositary functions also include registering ratifications, and according to Article C on denunciation, acts of denunciation. Article D adds the obligation to notify all Members of the registration of ratifications and denunciations. Lastly, when notifying the Members of the registration of the second ratification, the Director-General shall draw the attention of the Members to the date upon which the Convention shall come into force.
38. The Director-General discharges his or her obligations as to notification of Members mainly by publishing the required information in the *Official Bulletin* of the ILO (Series A) three times a year. In practice, however, this information does not include the (ipso jure) denunciations entailed by ratification of a Convention revising an earlier Convention, which may be justified by the fact that such denunciations are not, strictly speaking,

²⁸ ILO: *Record of proceedings*, International Labour Conference, 29th Session, Montreal, 1946, pp. 385-386.

²⁹ For the Conventions adopted before that date, these changes were introduced by the Final Articles Revision Convention, 1946 (No. 80).

effected through “acts of denunciation” within the meaning of Article D, paragraph 1. In addition, detailed information including ipso jure denunciations is presented every year at the Conference in a special section of the Report of the Committee of Experts on the Application of Conventions and Recommendations. Lastly, at its March-April and November sessions, the Governing Body is also informed in the Director-General’s Report of ratifications and denunciations, including governments’ statements of their reasons for denunciation, as requested by the Governing Body at its 184th Session.³⁰

39. Article 20 of the Constitution, which provides that any ratified Convention shall be communicated by the Director-General of the International Labour Office to the Secretary-General of the United Nations for registration in accordance with the provisions of article 102 of the Charter of the United Nations,³¹ was introduced in the Constitution in 1946 in recognition of the importance of entering Conventions in the register of treaties kept by the United Nations. However, it was considered that registration of a Convention would not be complete unless any subsequent actions affecting the application of the Convention – ratifications, acts of denunciation and declarations – were also registered by the Secretary-General. Article E of the standard final provisions accordingly provides that the Director-General shall communicate to the Secretary-General for registration full particulars of all ratifications and acts of denunciation registered. The procedure governing the deposit and registration of ILO Conventions with the United Nations was the subject of a Memorandum of Agreement signed between the two organizations in 1949.³²
40. In practice, the Director-General indicates in his or her communications to the United Nations the cases in which ratification entails ipso jure denunciation of another Convention, in accordance with its final Article corresponding to Article G of the standard final provisions, even though this type of denunciation is not carried out by means of an “act of denunciation” or “in accordance with the provisions of the preceding Articles”, as provided in Article E. Since the communication of this information is required nonetheless,³³ it would be possible to adapt the wording of Article E to this practice.

³⁰ Documents GB.184/11/18, paras. 27-34, and GB.184/205, para. 56.

³¹ Article 102 of the Charter of the United Nations provides as follows:

“1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.”

³² *Memorandum of Agreement concerning the procedure to be followed for the deposit and registration with the United Nations of international labour Conventions and certain other instruments adopted by the International Labour Conference, signed on 17 Feb. 1949, Official Bulletin*, Vol. XXXII, 1949, No. 1, pp. 414-415. The Memorandum refers to the regulations to give effect to article 102 of the Charter of the United Nations adopted by the United Nations General Assembly (resolution 97(I) of 14 Dec. 1946, as modified by resolutions 364 B(IV) of 1 Dec. 1949, 482 (V) of 12 Dec. 1950 and 33/141A of 18 Dec. 1978).

³³ Article 2 of the regulations mentioned in the previous note provides that “when a treaty or international agreement has been registered with the Secretariat [of the United Nations], a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat”.

E. Provision relating to authoritative texts

41. Article H, which provides that the English and French versions of the text of a Convention are equally authoritative, has remained unchanged in content since 1919. The languages of the authoritative texts are the official languages of the Conference pursuant to article 6, paragraph 3, and 24, paragraph 1, of the Standing Orders of the Conference. The English and French versions of the text of a Convention are authenticated by the President of the Conference and the Director-General.
42. *In the light of the foregoing, the Committee may wish to recommend that the Governing Body request the Office to present at its 288th Session draft standard final provisions taking account of the discussions held, with a view to their approval by the Governing Body and subsequently by the Conference.*

Geneva, 17 February 2003.

Point for decision: Paragraph 42.

Annex

Standard final provisions as used in the Safety and Health in Agriculture Convention, 2001 (No. 184),¹ (square brackets indicate the parameters left open in the proposed final Articles adopted by the Conference at its 29th Session (1946)²).

FINAL PROVISIONS

Article A

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article B

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force [12] months after the date on which the ratifications of [two] Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member [12] months after the date on which its ratification has been registered.

Article C

1. A Member which has ratified this Convention may denounce it after the expiration of [ten] years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until [one year] after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of [ten] years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of [ten] years and, thereafter, may denounce this Convention at the expiration of each period of [ten] years under the terms provided for in this Article.

Article D

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the [second] ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article E

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article F

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

¹ Articles 22 to 29.

² International Labour Conference, 29th Session, Montreal, 1946, *Record of Proceedings*, pp. 385-386.

Article G

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 24 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article H

The English and French versions of the text of this Convention are equally authoritative.