



SEVENTH ITEM ON THE AGENDA

Mapping out a strategy for possible future ILO action on working time

1. Working time is at the centre of the current debate about appropriate social and economic policies in a globalizing world. It is a key factor, together with wages and working conditions, for both economic growth and the workers' well-being, and as such it has proved a major policy challenge for modern economies. The standard-setting activity of the ILO in the area of hours of work and related matters such as weekly rest, holidays with pay or night work, is summed up in 35 Conventions and 16 Recommendations adopted between 1919 and 2005, with some 77 years separating the earliest (i.e. Hours of Work (Industry) Convention, 1919 (No. 1), Night Work (Women) Convention, 1919 (No. 4) (shelved), and Night Work of Young Persons (Industry) Convention, 1919 (No. 6)) from the most recent (i.e. Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)). The accumulation of working-time standards in various separate instruments has been a subject of growing concern and proposals for their revision or consolidation have recently gained considerable support.
2. This document looks into possible future action to follow up on the conclusions of the Committee of Experts on the Application of Conventions and Recommendations regarding the present-day relevance of ILO standards on hours of work, as reflected in its General Survey on the application of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), and the subsequent examination of the General Survey by the Conference Committee on the Application of Standards. After briefly reviewing developments of the past decade relating to working-time standards, the paper gives a summary account of the views expressed during this year's Conference discussion and focuses principally on the direction any possible future ILO action might take in this area.

Past initiatives and normative policy decisions

3. The question of revising the ILO standards on hours of work, in particular Conventions Nos. 1 and 30 dealing with hours of work in industry and with commerce and offices, has given rise to extensive discussions in recent years. At the centre of the debate has been the understanding that the instruments in question, even though they may be still relevant in certain respects, no longer fully reflect modern realities and that serious consideration should therefore be given to the possibility of their revision. However, all attempts to

explore and agree on a possible course of future ILO action on working-time issues have so far met with failure due to lack of consensus.

4. In October 1993, a Meeting of Experts on Working Time was convened to review and possibly adopt a code of practice on working time and also to discuss future ILO action concerning working time, including the possible revision of international labour standards in this field. The issues proved particularly complex and the discussions extremely difficult and, as a result, the Meeting of Experts was unable to adopt by consensus a code of practice or conclusions on the content of the draft code presented by the Office.¹ As regards future action on working time, the Meeting of Experts concluded that the ILO should continue and expand upon its collection and dissemination of information on working-time issues as a high priority, together with the improvement and further development of statistics in this area.
5. The numerous ILO standards on working time have been the subject of comprehensive review by the Working Party on Policy regarding the Revision of Standards, which was set up by the Governing Body in November 1995 to assess the need for revision of Conventions and Recommendations adopted before 1985 with the exception of fundamental and priority Conventions. Drawing on the Working Party's thorough examination, the Governing Body concluded that both the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), were up to date and invited member States to contemplate ratifying them.² The Governing Body also decided to invite member States which had ratified the Holidays with Pay Convention, 1936 (No. 52), or the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132).³ After the review of Convention No. 132, the Governing Body decided to maintain the status quo with respect to it.⁴
6. As regards hours of work, the Working Party on Policy regarding the Revision of Standards reviewed Conventions Nos. 1 and 30 at its third meeting in November 1996. According to the initial Office proposal, the Working Party could recommend to the Governing Body that it contemplate including the question of working-time arrangements on the agenda for a forthcoming session of the Conference with a view to general discussion, as well as to clarifying the possible need to revise these two Conventions and, where necessary, other instruments concerned with hours of work (or other appropriate solutions for the same purpose, such as a discussion in the Governing Body, a further Meeting of Experts, etc.).⁵ Following an exchange of sharply differing views on the propriety of holding a general discussion at the Conference, the Working Party finally endorsed the idea of a new General Survey of the matter to be undertaken pursuant to article 19 of the Constitution. Based on the recommendations of the Working Party, the Governing Body decided accordingly to invite member States to submit reports under

¹ See *Report of the Meeting of Experts on Working Time* (Geneva, 11-19 October 1993), MEWT/1993/8, p. 35.

² See GB.268/LILS/5(Rev.1), March 1997, paras. 71-72.

³ See GB.267/LILS/4/2(Rev.), November 1996, para. 35, and GB.268/LILS/5(Rev.1), March 1997, para. 75.

⁴ See GB.279/LILS/3(Rev.1), para. 50. The Part-Time Work Convention, 1994 (No. 175), was not examined by the Working Party as it was adopted after 1985 and therefore considered as up to date.

⁵ See GB.267/LILS/WP/PRS/2, paras. III.6 and III.7.

article 19 of the Constitution in respect of Conventions Nos. 1 and 30 and request the Committee of Experts then to carry out a General Survey of the matter.⁶

The current state of the debate

7. In December 2004, the Committee of Experts on the Application of Conventions and Recommendations completed its General Survey on the effect given in law and practice to Conventions Nos. 1 and 30 drawing upon information supplied by 84 countries pursuant to the Governing Body's decision, the comments communicated by employers' and workers' organizations and also the reports submitted under articles 22 and 35 of the ILO Constitution by those member States which have ratified one or other of the Conventions.⁷ In its conclusions, the Committee of Experts took the view that although "it remains important and relevant to provide for minimum standards of working hours, changes that have taken place since these two instruments were adopted, warrant their revision" (paragraph 328) and that "there are elements of the Conventions that are clearly outdated" (paragraph 322). The Committee also pointed out that "the need for internationally accepted standards on hours of work has been further increased by the process of globalization, with its corresponding requirements to create and implement universal 'rules of the game' for a global marketplace" (paragraph 321).⁸
8. The Committee went on to suggest certain factors which could be taken into account by the appropriate bodies of the Organization if a decision is taken to consider revision, such as, for instance, the possibility of preparing a single comprehensive instrument on hours of work for both industrial and non-industrial occupations, and the advisability of integrating in any single instrument both working and non-working-time issues, in particular the related issues of weekly rest and annual leave with pay, which are currently covered by other ILO instruments. Moreover, the Committee identified certain aspects which should be part of any exercise aiming at a comprehensive review of the existing system of international regulation of working time, including the need for: (i) effective workers' protection so that working hours do not undermine their health and safety; (ii) fair balance between work and family lives; (iii) the preservation of the level of protection available under the existing instruments; (iv) increased flexibility, for example by extending the daily hours limit while mandating adequate rest breaks, or by permitting the weekly hours limit to be averaged over reasonable periods of longer than one week combined with a reduction in the weekly limit and the continuing objective of the 40-hour week; (v) clear definition of working time allowing countries to adapt modern forms of working-time

⁶ See GB.267/LILS/4/2(Rev.), para. 32.

⁷ See *Hours of Work – From fixed to flexible?*, International Labour Conference, 93rd Session, 2005, Report III(Part 1B).

⁸ It will be recalled that, in its previous two General Surveys on working time, the Committee of Experts had come to similar findings: first, in 1967, the Committee noted that, although a certain degree of flexibility was desirable, "it would seem that the desired flexibility should, at least in certain sectors and situations, be accompanied by essential safeguards constituted by legislative provisions or other adequate methods establishing basic standards of protection"; see *Hours of work – General Survey*, Report III(Part IV), International Labour Conference, 51st Session, 1967, para. 311. Secondly, in 1984, the Committee cautioned that, while noting with interest "the efforts made in some countries to establish a flexibility in the arrangement of work schedules which is capable both of improving performance in terms of productivity and of reducing the time spent at the workplace, at the same time, of course, the basic guarantees in respect of working time contained in international labour standards should be respected"; see *Working time – Reduction of hours of work, weekly rest and holidays with pay*, International Labour Conference, 70th Session, 1984, Report III(4B), para. 325.

regulation to national conditions and also taking into account increasingly applied arrangements such as flexitime, on-call work, compressed work-weeks, staggered hours and variable daily shift lengths.

9. In June 2005, the Committee of Experts' General Survey was examined by the Conference Committee on the Application of Standards.⁹ The ensuing rich and varied discussion brought forth strong views on the question of the continued relevance of Conventions Nos. 1 and 30, the importance of balancing flexibility with protection of workers' safety, health and family life, the importance of the role of a regulatory framework and collective bargaining, and the role of social dialogue.
10. For the Employer members, the General Survey by no means covered the entirety of issues relevant to this multifaceted and very complex matter and further discussions on other important aspects of working time, such as holidays with pay, the organization of working time, night work and weekly rest, were required before any definitive conclusions could be drawn. Although they agreed that there was a need for clear rules allowing for humane working conditions with regard to protection against undue fatigue, reasonable leisure and opportunities for a personal life, they pointed out that work today was by nature very diverse and that therefore a "one-size-fits-all" approach to working hours was simply not practical.
11. From the Employer members' perspective, workers and employers should have considerable discretion to negotiate working-time arrangements in a decentralized manner, although general rules were needed to structure this process to enforce certain minimum standards, for example concerning maximum hours of work related to health and safety aspects. The Employer members, therefore, believed that it was premature at that stage to decide whether the next step should be one which would take the ILO through a normative approach leading to the revision of the existing instruments. In their view, the ILO had already gone along that road and, through the years, the Conference Committee had witnessed the shortcomings of the ILO Conventions on working time, particularly concerning their capacity to attract universal ratification.
12. For their part, the Worker members considered that admittedly working-time regulations could not remain rigid or unchangeable, but emphasized that recent developments in differentiated systems of working hours and working-time organization showed that business needs for flexibility could be met in a framework of social dialogue. Therefore all normative work on these two instruments should be ring-fenced by all the necessary guarantees that protection of occupational safety and health and social and family life required. Moreover, some enterprises would like to give priority to decentralized social dialogue, which could go as far as replacing dialogue between partners by individual negotiations directly with workers subject to precarious work and the threat of unemployment. Consequently, any revision of Conventions Nos. 1 and 30 must ensure respect for the principle of collective bargaining.
13. The Worker members took the view that, even if Conventions Nos. 1 and 30 did not entirely reflect recent developments in the organization of working hours, they remained relevant. They were favourable to an approach that proposed a single instrument which would cover the issue of working time in all its aspects, by reflecting on a much broader concept of working hours, which would include work, rest, holidays and leave as well as career prospects. In their view, any future action should sufficiently reflect the following priorities: linking flexibility and safety; focusing the debate on quality; and basing

⁹ See International Labour Conference, 93rd Session, 2005, *Record of Proceedings, Provisional Record No. 22, Part One*, paras. 73-131.

flexibility on intersectoral, sectoral and enterprise plans on collective bargaining and totally excluding any idea of exclusion clauses negotiated directly with workers. Effectively, such an important issue could only be efficiently regulated by the law and there should be no place for soft law. The Worker members felt, however, that it was too soon to approve of a revision process, as they sought guarantees to ensure that their concerns could be taken into account by governments and employers. They proposed that the issues of working time should be studied more in depth by collecting information on existing practices of flexibility in different sectors.

14. In their interventions, many Government representatives underlined the importance of having a single instrument covering working time as well as weekly rest and annual leave. Others drew attention to the incompatibility of Conventions Nos. 1 and 30 with modern realities and noted that the interface between new forms of work and the appropriate regulation of working time was complex and needed further and comprehensive empirical study before the nature and form of any international regulation could be discussed meaningfully.
15. By way of overall conclusion, the Committee's message was that the ILO should not hasten to consider a normative approach but should explore innovative ways to move forward. It was agreed that the Office should prepare a document for the Governing Body which would summarize the views expressed during the discussion and leave it to the Governing Body to determine the appropriate course of action. Among the proposals as to the form such action could take, a broad agreement appeared to emerge for the holding of a tripartite meeting of experts on working time with a view to preparing a guidance document, opening up the possibility of placing the question of a general discussion on the agenda of a future session of the Conference.

Future steps ahead

16. As estimated more than ten years ago (ILO Medium-Term Plan, 1990-95), "it will not be easy to reach tripartite agreement on the regulation of working time in the future. But failure to attempt to do so would reduce ILO standards to anachronistic irrelevance". The Committee of Experts last General Survey following up on the work of the Governing Body's Working Party on Policy regarding the Revision of Standards and, most importantly, the recent discussion on working time at the Conference Committee on the Application of Standards would now seem to allow for reasonable hope to break some new ground on working-time regulation which might achieve more tangible results as compared to past initiatives.
17. In effect, in the light of the conclusions of the Committee of Experts, and also considering the views expressed at the Conference discussion of the General Survey, it would appear that the most appropriate way to make some progress in this field would be to convene a tripartite meeting of experts with a view to initiating a comprehensive analysis of the issue of working-time regulation in all its multiple dimensions. The tripartite meeting of experts could outline an integrated framework of principles, policy options and recommendations, including guidance on the possible revision of the provisions of Conventions Nos. 1 and 30, which might serve as a basis for a general discussion on working time and related issues at a future session of the International Labour Conference should the Governing Body decide to hold such a discussion.
18. In preparation of the proposed meeting, the Office would be expected to undertake extensive research work on a large spectrum of issues to examine current knowledge on working-time arrangements and explore essential linkages between working time and other related issues, such as the regulation of hours of rest and annual paid holidays. The

research that would be needed by the meeting of experts is already under way. Over recent years, the Office, through its Conditions of Work and Employment Programme (TRAVAIL), has undertaken extensive research on all aspects of working time, consolidating and extending the current knowledge from across the world, in an effort to re-establish the ILO as a primary forum for discussions on working time. A report issued in 2004 on *Working time and workers' preferences in industrialized countries: Finding the balance* assesses statistical, legal and enterprise-level developments, includes research from an enterprise perspective and makes legal and policy suggestions for balancing the needs of employers and workers.¹⁰ The report offers approaches towards realizing this balance that promote health and safety; improve productivity; allow workers to harmonize their work with family responsibilities and other aspects of their lives; advance gender equality; and permit workers to exercise a degree of choice over their working time, within the legal limits. This work has been complemented by a report focused specifically on the effects of working hours and working-time arrangements on safety and health, which outlines the measures that can be taken to reduce their impact.¹¹ TRAVAIL is also in the process of publishing a collection of papers from the most recent international symposium on working time, which will contain the latest work by many of the leading working-time researchers on key recent issues, such as long hours, part-time work, non-standard working-time arrangements, work/family balance, the relationship between working time and non-working time and individual choice over working hours.¹²

- 19.** Specifically on the legal aspects of working time, the programme has identified and compared the different approaches towards the regulation of working hours. It has developed and made available online a database of working-time legislation, that provides up-to-date searchable information on the laws of more than 100 countries across all regions of the world.¹³ The database covers the entire spectrum of working-time laws, including those on hours limits, overtime, rest periods, annual leave, part-time work and night work. This information was also used as the basis of a comparative analysis of national working-time laws published earlier this year.¹⁴ As part of its current research programme, TRAVAIL is adding to its information on working-time laws by reviewing statistical and policy trends in developing and transition countries for a report to be published in 2006.¹⁵ Research is also currently being carried out on the economic implications of working-time regulation, which will include a review of the work of other international institutions (e.g. OECD, World Bank). On the completion of this research, the meeting would have available to it a substantial body of research on all elements of working time, affording it a comprehensive picture of statistical, legal and policy trends across the world.
- 20.** In addition, the meeting would be expected to review progress of ongoing work carried out within the Office with a view to developing improved statistical methodology and tools in

¹⁰ See Jon C. Messenger, ed.: *Working time and workers' preferences in industrialized countries: Finding the balance* (London, Routledge, 2004) (<http://www.ilo.org/public/english/protection/condtrav/publ/wtwo-jm-04.htm>).

¹¹ See Anne Spurgeon, *Working time: Its impact on safety and health* (ILO, 2003) (<http://www.ilo.org/public/english/protection/condtrav/publ/wtwo-as-03.htm>).

¹² See *Decent working time: New trends, new issues* (ILO, forthcoming 2006).

¹³ The Working Time Database is available at www.ilo.org/travdatabase.

¹⁴ See Deirdre McCann, *Working time laws: A global perspective. Findings from the ILO's conditions of work and employment database* (ILO, Geneva, 2005) (<http://www.ilo.org/public/english/protection/condtrav/publ/wtwo-dm-05.htm>).

¹⁵ See *Working time around the world* [working title] (ILO, forthcoming).

the field of working time. The Office cooperates closely with the international statistical community through the International Conference of Labour Statisticians (ICLS), to help develop the international statistical standards on working-time measurement and working-time arrangements. The international statistical community has recognized the explosion in the variety of working arrangements in place in almost all countries that make the old dichotomy between “normal” work and “alternative” working-time arrangements significantly less relevant today.

21. The Office, through its Bureau of Statistics (STAT), is therefore working towards the preparation of a revised statistical resolution concerning statistics of hours of work that would contain a conceptual framework for measuring hours worked that extends the scope of the framework beyond working-time arrangements. The new framework will need to meet several major objectives. One is to clarify key concepts relating to working-time statistics and ensure their common understanding. Another aim is to make a coherent link between concepts, and to provide a sound conceptual basis for decisions regarding the actual measurement of such concepts with harmonized definitions – including improvements for data collection instruments and processes. The framework and definitions included in a revised resolution on working-time measurement should be consistent with and aligned to other relevant existing international guidelines and recommendations: the SNA (System of National Accounts), other ICLS resolutions such as the October 1982 resolution concerning statistics of the economically active population, employment, unemployment and underemployment adopted by the 13th ICLS, and related ILO Conventions.

22. *The Committee may wish to recommend that the Governing Body:*

- (a) approve the organization of a tripartite Meeting of Experts to review and advise on modern working-time arrangements;*
- (b) subject to this approval, request the Office to prepare a document on the proposed agenda, composition and financial implications of the meeting with a view to its submission to the 295th Session (March 2006) of the Governing Body for final decision.*

Geneva, 28 September 2005.

Point for decision: Paragraph 22.