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90th Session 2002

Report VII (1)

Withdrawal of twenty Recommendations

Seventh item on the agenda

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INTRODUCTION

1. At its 277th Session (March 2000), the Governing Body of the International Labour Office decided, in accordance with article 12bis of its Standing Orders, to place on the agenda of the 90th Session (2002) of the International Labour Conference¹ an item relating to the withdrawal of 20 Recommendations. Six of these concern *employment policy*: Unemployment Recommendation, 1919 (No. 1), Unemployment (Agriculture) Recommendation, 1921 (No. 11), Unemployment (Young Persons) Recommendation, 1935 (No. 45), Public Works (International Co-operation) Recommendation, 1937 (No. 50), Public Works (National Planning) Recommendation, 1937 (No. 51), and Public Works (National Planning) Recommendation, 1944 (No. 73). Two Recommendations relate to *employment services and employment agencies*: Employment Agencies Recommendation, 1933 (No. 42), and Employment Service Recommendation, 1944 (No. 72). Two concern *vocational guidance and training*: Vocational Education (Agriculture) Recommendation, 1921 (No. 15), and Vocational Education (Building) Recommendation, 1937 (No. 56). Three Recommendations deal with *labour inspection*: Labour Inspection (Health Services) Recommendation, 1919 (No. 5), Inspection (Building) Recommendation, 1937 (No. 54), and Labour Inspectorates (Indigenous Workers) Recommendation, 1939 (No. 59). Seven further Recommendations relate to *hours of work*: Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37), Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38), Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39), Control Books (Road Transport) Recommendation, 1939 (No. 63), Night Work (Road Transport) Recommendation, 1939 (No. 64), Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65), and Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66).

2. In order to permit the Conference to abrogate or withdraw obsolete international labour Conventions or Recommendations, the International Labour Conference at its 85th Session (June 1997) adopted amendments to the Constitution of the International Labour Organization (addition of a paragraph 9 to article 19 of the Constitution),² and to the Standing Orders of the Conference (article 11 and article 45bis of the Standing Orders). A Convention or a Recommendation is considered obsolete “if [it] appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization”.³ The procedure for abrogation applies to Conventions which are in force. The procedure for withdrawal applies to Conventions which are not in force and to Recommendations. As the Conference noted,⁴ abrogation and withdrawal are the subject of the same procedural guarantees. The only difference

¹ Document GB.277/2/2.

² This provision is not yet in force.

³ Paragraph 9 of article 19.

⁴ ILC, 85th Session, 1997, *Provisional Record* No. 10, para. 10.

is that the Conference can, on the basis of its Standing Orders, withdraw an instrument before the entry into force of the constitutional amendment.⁵ The matter being examined here is the withdrawal of Recommendations under article 11 and article 45bis of the Standing Orders of the Conference.

3. This report and the questionnaire here below are communicated to governments pursuant to article 45bis of the Standing Orders of the Conference. The purpose of this report and its questionnaire is to enable the Conference to have the necessary elements to make a determination as to whether each Recommendation, seen as a whole, is obsolete. The procedure provided for is a single discussion at the 90th Session (2002) of the International Labour Conference.

⁵ At its 88th Session (2000) the Conference for the first time proceeded with the withdrawal of five obsolete Conventions (ILO: *Withdrawal of the Hours of Work (Coal Mines) Convention, 1931; the Hours of Work (Coal Mines) Convention (Revised), 1935; the Reduction of Hours of Work (Public Works) Convention, 1936; the Reduction of Hours of Work (Textiles) Convention, 1937; and the Migration for Employment Convention, 1939*, Reports VII(1) and VII(2), International Labour Conference, 88th Session, 2000 (Geneva, ILO, 2000)).

EXAMINATION OF RECOMMENDATIONS

4. The Recommendations in question were adopted between 1919 and 1944, that is during the first 25 years of the Organization's existence. The Recommendations were examined by the Working Party on Policy regarding the Revision of Standards of the Governing Body Committee on Legal Issues and International Labour Standards (LILS) during the 274th⁶ and 276th⁷ Sessions of the Governing Body (March and November 1999). In accordance with the recommendations of the Working Party, which were approved by the LILS Committee, the Governing Body decided to propose the withdrawal of these Recommendations at the International Labour Conference.⁸ The withdrawal of these instruments would put an end to their legal existence from the point of view of the Organization and allow its Members to have a clearer view of the Recommendations which should continue to guide them.

5. The reasons why the Governing Body decided to consider these Recommendations obsolete and to place their formal withdrawal on the agenda of the Conference are given below. It may be noted that in most cases the Recommendations were considered as having been superseded "de facto", that is by instruments relating to the same subjects and subsequently adopted by the Conference, without their replacement having been expressly indicated by the Conference. Moreover, three of the above Recommendations have now lost their intended purpose, which was strictly time-limited.

EMPLOYMENT POLICY

Unemployment Recommendation, 1919 (No. 1)

6. [Recommendation No. 1](#) is linked to the Unemployment Convention, 1919 ([No. 2](#)), and deals with the abolition of fee-charging employment agencies, the recruitment of workers in one country with a view to their employment in another country, unemployment insurance and public works to combat unemployment. Several instruments covering the same areas have been adopted since, in particular the Migration for Employment Convention (Revised), 1949 ([No. 97](#)), and its accompanying Recommendation ([No. 86](#)); the Migrant Workers (Supplementary Provisions) Convention, 1975 ([No. 143](#)), and its accompanying Recommendation ([No. 151](#)); the Employment Policy Convention and its accompanying Recommendation, 1964 ([No. 122](#)); and the Employment Promotion and Protection against Unemployment Convention, 1988 ([No. 168](#)), and its accompanying Recommendation ([No. 176](#)). As regards employment agencies,

⁶ Document [GB.274/LILS/WP/PRS/3](#): Recommendations Nos. 1, 5, 11, 15, 42, 45, 50, 51, 54, 56, 59, 72 and 73.

⁷ Document [GB.276/LILS/WP/PRS/4](#): Recommendations Nos. 37, 38, 39, 63, 64, 65 and 66.

⁸ Document [GB.274/10/2](#), Appendix I, and [GB.276/10/2](#), Appendix I.

the instruments adopted subsequently are the Fee-Charging Employment Agencies Convention, 1933 (No. 34), and its accompanying Recommendation (No. 42); the Fee-Charging Employment Agencies (Revised) Convention, 1949 (No. 96); and, lastly, the Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation (No. 188). While *Convention No. 2*, whose status quo was maintained by decision of the Governing Body,⁹ is confined to providing for the establishment of free public employment agencies and the coordination of public and private agencies, *Recommendation No. 1* suggests the adoption of measures to prohibit the establishment of employment agencies which charge fees or which carry on their business for profit and to abolish those that already exist. Convention No. 34 and Recommendation No. 42, and subsequently Convention No. 96, progressively softened this radical position, and led up to Convention No. 181 and Recommendation No. 188 which are currently the up-to-date standards on the subject and adopt a different approach, recognizing the role that private employment agencies may play in a well-functioning labour market, while protecting the rights of workers using their services. Recommendation No. 1 has therefore been superseded de facto by several more detailed standards covering the same areas.

Unemployment (Agriculture) Recommendation, 1921 (No. 11). Unemployment (Young Persons) Recommendation, 1935 (No. 45). Public Works (International Co-operation) Recommendation, 1937 (No. 50). Public Works (National Planning) Recommendation, 1937 (No. 51). Public Works (National Planning) Recommendation, 1944 (No. 73)

7. These five Recommendations are autonomous. They have been superseded de facto by the Employment Policy Convention, 1964 (No. 122), and its accompanying Recommendation (No. 122), which lay down comprehensive standards in the field of employment policy. Furthermore, *Recommendation No. 45* was superseded de facto by the Special Youth Schemes Recommendation, 1970 (No. 136).

EMPLOYMENT SERVICES AND EMPLOYMENT AGENCIES

Employment Agencies Recommendation, 1933 (No. 42)

8. This Recommendation is linked to the Fee-Charging Employment Agencies Convention, 1933 (No. 34). Convention No. 34 was revised for the first time by the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and on a second occasion in 1997, at the same time as Convention No. 96, by the Private Employment Agencies Convention, 1997 (No. 181), which is supplemented by its accompanying Recommendation (No. 188). As indicated above, the 1997 instruments, which are currently the most up-to-date instruments on this subject, contain different objectives to those pursued previously by the Organization. *Recommendation No. 42* has therefore been superseded de facto. Consequently, Recommendation No. 42, like Con-

⁹ Document GB.268/8/2, Appendix II, para. 53.

vention No. 34, which it accompanies,¹⁰ was considered as obsolete by the Governing Body.

Employment Service Recommendation, 1944 (No. 72)

9. [Recommendation No. 72](#) is autonomous. In the framework of the in-depth review of international labour standards carried out by the Office in 1974, Recommendation No. 72 was considered as superseded de facto by the Employment Service Convention ([No. 88](#)), and Recommendation ([No. 83](#)) of 1948.¹¹ In fact, over the years the 1948 instruments, which are more precise and comprehensive, have become the reference instruments in this area and have thus de facto replaced the 1944 instrument.

VOCATIONAL GUIDANCE AND TRAINING

Vocational Education (Agriculture) Recommendation, 1921 (No. 15)

10. This Recommendation is autonomous. It was superseded de facto in a first instance by the Vocational Training (Agriculture) Recommendation, 1956 ([No. 101](#)). Recommendation No. 101 was in turn expressly replaced by the Human Resources Development Recommendation, 1975 ([No. 150](#)).

Vocational Education (Building) Recommendation, 1937 (No. 56)

11. This Recommendation is autonomous. New provisions regarding the two areas to which it relates — vocational education and safety and health in the building industry — have been introduced in the following instruments: the Human Resources Development Convention, 1975 ([No. 142](#)), and its accompanying Recommendation ([No. 150](#)); and the Safety and Health in Construction Convention, 1988 ([No. 167](#)), and its accompanying Recommendation ([No. 175](#)). [Recommendation No. 56](#) has therefore been superseded de facto.

LABOUR INSPECTION

Labour Inspection (Health Services) Recommendation, 1919 (No. 5). Inspection (Building) Recommendation, 1937 (No. 54). Labour Inspectorates (Indigenous Workers) Recommendation, 1939 (No. 59)

12. [Recommendations Nos. 5, 54 and 59](#) are autonomous. They have been superseded de facto by more detailed standards adopted in 1947 and 1969. These standards are the Labour Inspection Convention, 1947 ([No. 81](#)), and its accompanying Recommendation ([No. 81](#)), the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 ([No. 85](#)), and the Labour Inspection (Agriculture) Convention, 1969 ([No. 129](#)), and its accompanying Recommendation ([No. 133](#)).

¹⁰ Document GB.265/8/2, Appendix I, para. 48.

¹¹ Document GB.194/PFA/12/5, Appendix I, p. 58.

HOURS OF WORK

Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37). Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38). Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39)

13. These three Recommendations are linked to the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Each of these instruments relates to a different category of establishment. The purpose of these three Recommendations was to invite the member States to conduct inquiries into the hours of work of different categories of workers excluded from the scope of Convention No. 30 and to inform the ILO of the results of that survey within a period of four years following the adoption of these Recommendations. These inquiries were intended to allow the Governing Body to examine the possibility of adopting Conventions in this area at a later date. These instruments have therefore now lost their intended purpose, which was strictly time-limited. Furthermore, the issue of hours of work of nursing personnel is currently dealt with under the Nursing Personnel Convention, 1977 (No. 149), and its accompanying Recommendation (No. 157), and the issue of hours of work in the hotel and catering sector is dealt with under the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), and its accompanying Recommendation (No. 179). In addition, the Reduction of Hours of Work Recommendation, 1962 (No. 116), is applicable to all categories of workers, with the exception of those working in agriculture, maritime transport and maritime fishing.

Control Books (Road Transport) Recommendation, 1939 (No. 63). Night Work (Road Transport) Recommendation, 1939 (No. 64). Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65). Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66)

14. These four Recommendations are linked to the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67). The latter was revised by the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), which is in turn linked to the Hours of Work and Rest Periods (Road Transport) Recommendation, 1979 (No. 161). The provisions contained in Recommendations Nos. 63, 65 and 66, concerning respectively control books, the establishment of bargaining machinery with a view to implementing Convention No. 67 and the establishment of specific provisions covering private chauffeurs, were superseded de facto by the provisions contained in Convention No. 153 and Recommendation No. 161. As regards night work, the currently most modern instruments are the Night Work Convention, 1990 (No. 171), and its accompanying Recommendation (No. 178), in which the emphasis is no longer, as it had been in Recommendation No. 64, on restrictions on the possibilities for night work, but on the protection of the safety and health of night workers, including the possibility of providing an alternative to night work in certain situations. Recommendations Nos. 63, 64, 65 and 66 have therefore been superseded de facto. Consequently, these four Recommendations, like Convention No. 67 which they accompany, were considered obsolete by the Governing Body.

QUESTIONNAIRE

In accordance with article 45bis of the Standing Orders of the International Labour Conference, governments are invited to consult the most representative organizations of employers and workers before finalizing their replies to the following questionnaire. The International Labour Office would be grateful if the replies could reach the Office in Geneva by 1 November 2001.

I. Unemployment Recommendation, 1919 (No. 1)

1. *Do you consider that Recommendation No. 1 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 1 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

II. Labour Inspection (Health Services) Recommendation, 1919 (No. 5)

1. *Do you consider that Recommendation No. 5 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 5 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

III. Unemployment (Agriculture) Recommendation, 1921 (No. 11)

1. *Do you consider that Recommendation No. 11 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 11 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

IV. Vocational Education (Agriculture) Recommendation, 1921 (No. 15)

1. *Do you consider that Recommendation No. 15 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 15 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

V. Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37)

1. *Do you consider that Recommendation No. 37 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 37 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

VI. Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38)

1. *Do you consider that Recommendation No. 38 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 38 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

VII. Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39)

1. *Do you consider that Recommendation No. 39 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 39 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

VIII. Employment Agencies Recommendation, 1933 (No. 42)

1. *Do you consider that Recommendation No. 42 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 42 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.*

IX. Unemployment (Young Persons) Recommendation, 1935 (No. 45)

1. Do you consider that Recommendation No. 45 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 45 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

X. Public Works (International Co-operation) Recommendation, 1937 (No. 50)

1. Do you consider that Recommendation No. 50 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 50 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XI. Public Works (National Planning) Recommendation, 1937 (No. 51)

1. Do you consider that Recommendation No. 51 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 51 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XII. Inspection (Building) Recommendation, 1937 (No. 54)

1. Do you consider that Recommendation No. 54 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 54 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XIII. Vocational Education (Building) Recommendation, 1937 (No. 56)

1. Do you consider that Recommendation No. 56 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 56 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

**XIV. Labour Inspectorates (Indigenous Workers) Recommendation, 1939
(No. 59)**

1. Do you consider that Recommendation No. 59 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 59 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XV. Control Books (Road Transport) Recommendation, 1939 (No. 63)

1. Do you consider that Recommendation No. 63 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 63 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XVI. Night Work (Road Transport) Recommendation, 1939 (No. 64)

1. Do you consider that Recommendation No. 64 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 64 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

**XVII. Methods of Regulating Hours (Road Transport) Recommendation, 1939
(No. 65)**

1. Do you consider that Recommendation No. 65 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 65 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XVIII. Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66)

1. Do you consider that Recommendation No. 66 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 66 has not lost its purpose or still makes a useful

contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XIX. Employment Service Recommendation, 1944 (No. 72)

1. Do you consider that Recommendation No. 72 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 72 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.

XX. Public Works (National Planning) Recommendation, 1944 (No. 73)

1. Do you consider that Recommendation No. 73 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 73 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any information on the effect which has been given, or is proposed to be given, to its provisions.