FIRST ITEM ON THE AGENDA

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

I. Election of the Officers

1. The Working Party elected its Officers as follows:

Chairman: Mr. J-C. Cartier, (Government, France)
Vice-Chairmen: Miss C. Hak, (Employer, Netherlands) and Mr. J.-C. Parrot (Worker, Canada).

The Government group announced that, for the present meeting of the Working Party, they had elected Mr. Perez Vega, (Government, Chile) as Vice-Chairman.

II. General remarks

2. The Chairman recalled that the Working Party was a subsidiary body of the Committee on Legal Issues and International Labour Standards (LILS Committee), which had conferred on it a mandate to establish recommendations regarding the policy for revising standards. It was to propose concrete solutions and for this purpose based its discussions on the document prepared by the Office, which faithfully reflected the discussions in the Committee.

3. The Employer members congratulated the Office on the quality of the document presented to the Working Party, and expressed satisfaction with the paragraphs analysing the legal problems posed by the revision of standards. They entered the discussions with an open mind, placing emphasis on the need to reach a consensus. There must be a clear distinction between the discussions on the revision of standards and other discussions, in particular those concerning basic human rights, which would take place within the Committee on Legal Issues and International Labour Standards and the Governing Body. Three lists might be drawn up: the first to include basic human rights Conventions and other priority Conventions that must not be revised; the second would cover Conventions that

1 GB.264/LILS/WP/PRS/1.
were outdated or dormant; and the third the remaining Conventions which might or might not be revised as appropriate. The reasons for revision should then be stated. Factors to be examined were the number of ratifications, the present-day relevance of the objectives of the Convention, and the real obstacles to their ratification. Once the decision was taken to revise, the criteria of flexibility, general scope of application and simplicity should be followed, as for new Conventions. In view of the importance of this question, they regretted that so little time had been allocated to the issues before the Working Party, and suggested that a smaller subgroup be formed to discuss the matters over a period of several days prior to the next Governing Body session.

4. The Worker members stated that they were determined to reach a consensus and considered that the Working Party must set aside the time necessary for this purpose. They were astonished to read in paragraph 19 of the Office paper that the standard-setting system had been regularly called into question over the past 30 years. It was important to emphasize that the aim had always been to improve the system, and not to call it into question. The Worker members entered the discussion with this in mind. Their position was not to oppose revision on principle, but to ensure that it was carried out to better adapt standards for the improvement rather than the reduction of the level of protection. The difficulty of the task of the Working Party derived from the complexity of questions that were in many cases of a very technical nature, as was evident from the paper, which had numerous footnotes referring to documents dating from as early as 1929. Any confusion that might tend to complicate the examination of the issues should be avoided. As was emphasized in paragraph 6 of the document, examination on a case-by-case basis was the only reliable method for identifying the needs for revision. Moreover, it was a precondition for any technical or partial revision.

5. The representative of the Government of Norway stressed the importance attached by his Government to the revision process and the need to improve standard setting by ensuring that Conventions were up-to-date and relevant. He proposed that the two criteria for deciding whether or not to revise should be the relevance of the Convention, and the number of ratifications that it had received.

6. The representative of the Government of Tunisia paid tribute to the quality of the Office paper. Revision policy must be guided by a concern to adapt international labour standards to the present day, to facilitate their application and ensure their effectiveness. This did not mean having more or fewer standards, but rather ensuring that the standard-setting system was a factor for social progress and human development and that it remained the fundamental pillar of ILO activities. In this respect, the proposals set out in paragraphs 32 to 76 of the paper provided a good basis for discussion.

7. The representative of the Government of the Russian Federation agreed with the representative of the Government of Norway that the goal was to eliminate any doubts that might exist regarding the relevance of international labour standards. A list should be prepared of Conventions that concerned human rights issues and which should not be subject to revision. He considered it particularly important for a system to be developed to abrogate Conventions that were obsolete or not in force, and proposed that a questionnaire be sent to each
member State on this matter. The replies could be given to the Committee of Experts for study, and the final decisions made by the LILS Committee.

8. The representative of the Government of Chile referred to the logic underlying the questions raised in the paper. The Working Party should identify criteria that were objective and accepted by all the groups, leaving open the question as to which instruments must be revised. The Working Party must avoid acting too hastily in view of the known difficulties, as suggested in paragraph 19 of the paper. The conceptual framework of a policy for the revision of Conventions should take into account the fact that a new model of industrial relations had been established, and should also take into account world economic integration and the needs of democracies.

9. The representative of the Government of Egypt fully supported the revision process, as a large number of Conventions had not been supported by member States, as indicated by their rate of ratification.

10. The representative of the Government of Sudan noted that any standard-setting policy should take into account current world opinion, changes in free market policies that affected the world of work, and the entry of women and young people into the labour market. The number of ratifications was not a determining factor, as countries often used Conventions as guidelines even though they were for various reasons not in a position to ratify them.

11. The representative of the Government of the Islamic Republic of Iran stressed that any revision undertaken should not weaken the Conventions. The classification of standards into several groups should not be undertaken in a way that marginalized any of them, as all the Conventions formed a whole that protected workers' basic rights and constituted the International Labour Code. His preference was for the Working Party to begin by discussing criteria and procedures for revision.

12. The Chairman noted that there was a broad consensus on the essential issue, namely that the exercise was not intended to weaken the standard-setting system, but rather to rejuvenate and strengthen it.

III. Examination of proposals
(Paragraphs 32 and 76 of GB.264/LILS/WP/PRS/1)

1. Conventions that should not be revised
(Paragraphs 32 (a) and (b))

13. The Chairman proposed that the Working Party examine the proposals on the basis of the Office paper. To define the "scope" of revision, the paper proposed in paragraphs 32(a) and (b) that the Conventions on basic human rights and other priority Conventions be excluded. These were the ten Conventions that were traditionally regarded as priority Conventions in terms of ratification and application. The importance of the ILO's Conventions on human rights had been enshrined by the international community in the conclusions of the World Summit for Social Development held in Copenhagen.

14. Like the Worker members, the Employer members considered that the Minimum Age Convention, 1973 (No. 138) should also be added to the list of Conventions on basic human rights that must not be revised. They suggested that
the Conventions referred to in subparagraphs (a) and (b) could be called basic Conventions, or Conventions that in general have received a higher rate of ratification. With regard to the other priority Conventions, the Worker members stated that although it was useful to stress the importance of these Conventions, which should not be revised, it should be ensured that they were not turned into a formal category of instruments, as there would then be a risk that all other Conventions would be regarded as “non-priority”.

15. The representatives of the Governments of the United States, Norway and Australia expressed reservations about the inclusion of Convention No. 138 in the category of Conventions that should not be revised, while the representative of the Government of Japan opposed such inclusion. The representative of the United States Government pointed out that the issue of child labour was on the agenda of the Committee on Employment and Social Policy, while the promotion of fundamental human rights was a separate item on the agenda of the Committee on Legal Issues and International Labour Standards. The representative of the Government of Norway considered that the low number of ratifications of this Convention (46) could be attributed to the rigidity of its rules, while the representative of the Government of Australia noted the technical difficulties that were an obstacle to its ratification for many countries.

16. The Employer and Worker members recalled that the promotion of Convention No. 138 on a priority basis was an objective included in the conclusions of the World Summit for Social Development, and were surprised that Governments were going back on conclusions that they had subscribed to and that had already been approved by the Governing Body. Moreover, the Employer members observed that this Convention concerned minimum age, and not the separate issue of child labour. The Worker members also pointed out that the LILS paper on the prospects for the ratification of basic human rights Conventions noted the positive attitude of many countries with regard to the ratification of Convention No. 138.

17. The representative of the Government of France considered that this was a priority Convention that must be promoted vigorously, pending the possible adoption of a further instrument to supplement it, which likely in view of the discussions taking place in various committees of the Governing Body.

18. A number of Government representatives considered that other instruments might be included among the priority Conventions. In this regard, the representative of the Government of the Russian Federation referred to the Conventions concerning migrant workers and indigenous and tribal peoples, as well as the Protection of Wages Convention, 1949 (No. 95), and the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). In addition, the representative of the Government of Australia referred to the Social Security (Minimum Standards) Convention, 1952 (No. 102).

19. The representative of the Government of the Russian Federation questioned the significance of the distinction between “basic” and “priority” Conventions. The representative of the Government of the Islamic Republic of Iran considered that the discussion should concentrate on the most ratified Conventions, otherwise the question could be raised at a later date.
20. The Chairman recalled that in the practice of the ILO, Conventions designated as “priorities” did not solely concern basic human rights. This term indicated the special importance attached to certain Conventions, which in particular involved a two-year interval for the submission of reports on their application.

21. The Working Party agreed that the six basic human rights Conventions (Nos. 87 and 98; 100 and 111; 29 and 105) as well as four other priority Conventions (Nos. 81, 129, 122 and 144) should not be subject to revision. It also considered that the question of including Convention No. 138 should be set aside for the time being, pending the outcome of the discussions that would take place in the Committee on Legal Issues and International Labour Standards and the Governing Body.

2. Revision criteria, obsolete instruments
(Paragraphs 32 (c) and (e))

22. The Employer members stated that they wished to study criteria for revision in depth. They proposed that two main criteria be retained: the number of ratifications of Conventions (bearing in mind the relative value of this criterion); and the out-of-date or obsolete nature of some Conventions.

23. The Worker members stressed the need for a global examination on a case-by-case basis to identify specific revision needs. General criteria would not take into account the specificity of each Convention. They emphasized that, of the four criteria mentioned, only the number of ratifications was an objective criterion, albeit a relative one, for the identification of revision needs. The others — general application, simplicity and flexibility — were criteria that could serve as a guide in the revision process once the needs were identified. A list of obsolete Conventions should be prepared.

24. The representatives of the Governments of the Islamic Republic of Iran and Norway commented on the information contained in Appendix II to the Office paper. The representative of the Government of Norway saw no valid reasons for artificially preserving obsolete Conventions. By eliminating them, the average level of ratification would increase, the credibility of the ILO would be strengthened, and no situation would be covered by two Conventions at the same time, as was the case for 28 Conventions that had been revised and were listed in Appendix II.

25. After an exchange of views on the matter, the Working Party requested that the Office prepare a new paper for its next meeting in order to reexamine and set out in detail the list of Conventions in Appendix II and, on this basis, to draft four separate sections:
(a) a list of Conventions that had not entered into force indicating, where possible, the reasons;
(b) an analysis of the denunciations that had occurred;
(c) a suggested list of obsolete Conventions indicating the reasons in each case;
(d) a list of Conventions that had received few ratifications — 20 or fewer — indicating where possible the reasons for the low rate of ratification.
26. In addition, the paper should consider methods that could be proposed (abrogation, designation as dormant, revision or status quo).

27. The Working Party agreed that at this stage the maritime Conventions would not be taken into consideration for the purposes of the paper.

3. **General guidelines on the content and form of Conventions**
   (Paragraph 32 (d))

28. The Employer members recalled the many possibilities for establishing such general guidelines. Some were to be found in a previous paper prepared by the Office on flexibility provisions in Conventions (GB.244/SC/3/3). Others had been examined by the Ventejol Working Party, in the proposals contained in a paper by the International Organization of Employers, or in the IMEC paper. Such guidelines would be useful for those conducting negotiations in Conference technical committees as well as for the Office when preparing questionnaires, but this was not a priority.

29. The Worker members considered that it was not appropriate to deal with this question in the Working Party, and they agreed that it should not be dealt with as a priority matter.

30. The representatives of the Governments of Norway and Sudan stressed the need to draft Conventions that were concise, clear and unambiguous. Questionnaires should not be excessively detailed, and in the Conference technical committees delegates should act responsibly, refraining from introducing amendments that hindered the adoption of coherent texts.

4. **Methods to facilitate the revision of standards**
   (Paragraphs 76 (a), (b) and (c))

31. The Employer members were in favour of holding technical preparatory conferences and preliminary discussions as suggested under paragraph 76(a) of the Office paper. Nevertheless, resort to these procedures must not be indiscriminate. They regretted that in the case of the revision of Convention No. 96, included in the 1997 Conference agenda, only a single discussion had been scheduled. In this regard the double-discussion procedure was preferable. With respect to paragraph 76(b), there must have been a good reason why the simplified revision procedure had not been used since 1965, and there was therefore no need to insist on its use now. They were also in favour of using the partial revision methods and additional protocols mentioned in paragraph 76(c) on a case-by-case basis. What was important was the quality of the instruments adopted by the Conference rather than any other considerations.

32. The Worker members considered that the goal to be pursued should be to increase the choice of procedures and not to exclude recourse to the double-discussion procedure. They were neither in favour of technical preparatory sessions nor a preliminary discussion stage prior to the general discussion. The simplified procedure of 1965 should not in their view be reactivated. On the other hand, they were in favour of greater recourse to partial revisions and additional protocols.
33. The representative of the Government of Mexico indicated that as this matter concerned the strengthening of the ILO’s standard-setting system, a case-by-case approach to all the procedures open to constituents was preferable to establishing a general criterion. The representatives of the Governments of Sudan and the Islamic Republic of Iran shared this view. The representative of the United States Government recalled that the work of the Committee of Experts, the Conference Committee on the Application of Standards and the information in government reports on the application of standards could be useful for revision purposes. Any appropriate method of revision should take into account all such information.

34. The representative of the Government of Chile stated that interdisciplinary elements should be taken into consideration when deciding on revision, independently of technical expertise regarding the subject.

35. The representative of the Government of Norway joined with the Chairman in stressing the priority that must be attached to the quality of new instruments, as well as the seriousness and speed with which such revisions were carried out.

5. Denunciation periods for Conventions
(Paragraphs 76 (d) and (e))

36. The Employer members were in favour of reducing the period for the renewal of validity of a Convention to five years, and amending the “window” for denunciation, which should be calculated as from the date of ratification. These new procedures should apply only to new instruments in view of the legal implications that would arise for Conventions and rights already in force.

37. The Worker members stated that they opposed modification of both the validity periods and the window for denunciation. As indicated in paragraph 46 of the Office paper, it had not been demonstrated that the denunciation procedures were in any way related to the level of ratification of Conventions.

38. The representatives of the Governments of the Russian Federation and of Norway considered that the denunciation periods should be shortened. The representative of the Government of Mexico and the representative of the Government of the Russian Federation both agreed that the Working Party should examine the idea that the Conference adopt an instrument that would modify the denunciation periods for earlier Conventions.

6. Abrogation and extinguishment of standards,
coherence of the standard-setting system
(Paragraphs 76 (f), (g) and (h))

39. At the request of a Government representative, the Legal Adviser gave general indications about the meaning of “abrogation” as used in paragraph 76(f) of the paper and the implications of the term. As noted in paragraphs 51 to 57 of the paper, the question was a complicated one. In law, abrogation meant the termination of the existence in law of a text, which then ceased to have legal effect in the international order, without prejudice to its possible continued effect in national law. Abrogation affected the very existence of a Convention. This
distinguished it from other pragmatic methods described in the paper for solely limiting the effects of Conventions, such as the removal of obsolete instruments from its published collection of ILO Conventions and from requests for reports under article 22 of the ILO Constitution at longer intervals; only abrogation could bring an end, for example, to the possibility of ratifying a Convention (unless this had been foreseen by its terms) or of making a representation under article 24 or bringing a complaint under article 26 of the ILO Constitution. Such abrogation was, however, difficult to achieve because according to the concept of ILO Conventions as developed before World War II (a concept which could be open to further discussion), once an ILO Convention created obligations for and between the States having ratified it, it took on a life of its own independent of the Conference which gave birth to it. However, the problem of how to nullify the effects of obsolete Conventions was not insurmountable, and the Office could prepare a paper exploring the various possibilities if the Working Party so wished. Discussion on this point might also involve an examination of pertinent provisions of the Vienna Convention on the Law of Treaties, and its article 54 in particular. As stated in the Office paper, one possibility for abrogating a Convention would be to extinguish its effects by having all the parties denounce it and the International Labour Conference decide to close it to further ratification. For a State for which the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) was in force, a decision to denounce would of course be subject to the consultation requirements of that instrument.

40. The Employer members stated that this matter raised technical and legal difficulties that should be dealt with at the next meeting of the Working Party.

41. The Worker members were prepared to address these questions upon the completion of a list of obsolete Conventions. Referring to paragraphs 58 to 62 of the paper, they emphasized that it did not seem appropriate to reconsider the classification set out in the Ventejol Report. To them it seemed dangerous to categorize a limited number of instruments under the heading "Conventions that represent current objectives of the Organisation". The category of instruments "to be promoted on a priority basis" must be retained.

42. The Working Party asked the Office to prepare for its next meeting a paper concerning abrogation or extinguishment of some Conventions.

7. Entry into force of Conventions
(Paragraph 76(i))

43. The Employer members expressed the hope that the minimum number of ratifications necessary for a Convention to enter into force would be raised to ten.

44. The Worker members were not prepared to discuss the matter, as in their view it had no consequences for the ILO's standard-setting system.

45. The representative of the Government of the Russian Federation considered that, to ensure the authority of a Convention, at least 20 per cent of member States should have ratified it: hence the minimum number of ratifications should be raised to 30. The representative of the Government of the United States considered that the matter depended greatly on the content of each Convention,
and that there should not be a single criterion for all cases. The representative of
the Government of Chile supported this position, noting that the requirement of
two ratifications had been adopted when the ILO had only 50 members, and it
was now reasonable to change this requirement.

8. System for assessing standards
(Paragraph 76(j))

46. The Employer members stated that they were satisfied with the system
of general surveys conducted by the Committee of Experts. The proposals in
paragraph 73 of the Office paper would be acceptable, despite the additional work
that this would entail for governments and the Office. With regard to the
proposals in paragraph 74 of the paper, they expressed reticence regarding
consultations with international organizations that did not include the social
partners, as this might damage tripartism in the ILO. The proposals in paragraph
75 were interesting, but annual reports would probably be too frequent and would
involve an excessive workload for governments and the Office.

47. The Worker members reiterated their doubts regarding new initiatives
concerning the evaluation of standards that might duplicate a case-by-case
examination. Nevertheless, they were not opposed in principle to the use of
Article 19(5), but they opposed the procedure referred to in Article 14(1).

48. The representative of the Government of the Islamic Republic of Iran
stated that the proposal set out in paragraph 75 of the paper could serve as a
starting point for the revision of a specific Convention, provided that the social
partners were involved in accordance with the unique tripartite structure of the
ILO.

49. The Employer members emphasized the importance of the discussion on
the revision of standards as part of a discussion on the future of standards. They
expressed regret that the response from governments had not been more extensive
and detailed. They were committed to ensuring that the discussions of the
Working Party were productive.

50. The Committee on Legal Issues and International Labour Standards
is invited —

a) to take note of the report of the Working Party on Policy regarding the
Revision of Standards;

b) to note the broad consensus on essential issues which emerged within
the Working Party, namely that its work was intended to rejuvenate and
strengthen the standard-setting system (paragraph 12 of this report);

c) to examine the following proposals that were the subject of a consensus
within the Working Party:

i) the proposal that the six basic human rights Conventions (Nos. 87
and 98, 100 and 111, 29 and 105) and the four other priority
Conventions (Nos. 81, 129, 122 and 144) would be excluded
from any revision, while the question of including Convention
No. 138 would be set aside for the time being (paragraph 21 of
this report);
ii) that a paper should be prepared by the Office for the next meeting of the Working Party, based on Appendix II to GB.264/LILS/WP/PRS/1, in the manner set out in paragraph 25 of this report;

iii) that a paper should be prepared by the Office for the next meeting of the Working Party concerning the possibilities for abrogation or extinguishment of certain Conventions (paragraph 42 of this report);

d) to note that, regarding the proposals that gave rise to a first exchange of views, the Working Party agreed to reexamine them, and asked that the time necessary for this purpose be made available;

e) to make recommendations to the Governing Body on the above proposals, and on any other relevant question, as well as on the follow-up to be given to the activities of the Working Party.


Point for decision: Paragraph 50.