FIRST ITEM ON THE AGENDA

Standards in need of revision and related issues

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1. At its 262nd Session (March-April 1995), the Governing Body decided, on the recommendation of the Committee on Legal Issues and International Labour Standards, to establish a working party on policy regarding the revision of standards. The Working Party was instructed to examine the questions raised in the document entitled “Standard-setting policy: The revision of international labour standards and other related issues”, in particular in paragraphs 67 and 30, and to make its recommendations to the Committee. It was also to examine the question of the criteria that could be applied to the revision of standards. The Working Party is comprised of 16 Government members (four from each region), eight Employer members and eight Worker members. It must be chaired by a Government representative and its meetings are private.

2. The Office submits this document for examination by the Working Party. The first part of the document contains an analysis of revision requirements, including an examination of the criteria that could be applied to revision, in accordance with the Governing Body’s request. The second part of the document examines the other issues raised in paragraph 67 of the above-mentioned document, as well as the question of denunciation periods for international labour Conventions, added at the Governing Body’s request. Each part ends with a set of concrete proposals on which the Working Party is invited to take a decision.

First part — The need for revision

3. In the report it submitted to the LILS Committee in April 1995 the Office stressed that the first step should be to assess actual revision needs, on as objective a basis as possible by way of tripartite examination. The Committee agreed to carry out this examination, but the discussions it held revealed differences of opinion with respect to the extent of revision needs and the evaluation procedure to adopt.

4. Three different methods were proposed to assess revision needs:
   - Firstly, a case-by-case examination, based on the specific features of each instrument. The Workers’ group favoured this method and it was widely endorsed during the discussions held by the two Ventejol Working Parties.
   - Next, the establishment of criteria to be used to draw up a list of instruments for revision. The Government group and the Employers’ group said they preferred this method, which was specified in the Working Party’s mandate.
   - Lastly, the development of a conceptual framework to identify the areas and groups of instruments on which revision activities should be primarily concentrated. This procedure complements the two others. The Government group stressed the need to develop a conceptual framework in order to adapt Conventions to current needs and to improve their rates of ratification.

1 Document GB.262/LILS/3.
2 idem, para. 67(1).
5. This document will look at the advantages and restrictions of each approach before making proposals on the policy to be applied for the revision of standards. First of all we would note that although the analyses below are based on revision needs they are also applicable mutatis mutandis to the adoption of new standards.

I. Case-by-case examination

6. Individual examination, Convention by Convention, appears to be essential to achieve the two revision objectives which emerged from Conference discussions in June 1994 — to update standards and to facilitate the ratification of Conventions and their application. Identifying outdated provisions and those in need of revision in order to improve the rate of ratification of an instrument requires a specific and thorough examination for which constituents’ experience and their requests for revision should be drawn on as much as possible.

7. On this basis, the Ventejol Working Party (1987) listed 23 Conventions and Recommendations to be revised. Fifteen instruments on that list have since been revised. Four others should be revised during the special Maritime Session of the Conference which was scheduled for 1996. There are therefore only four instruments (C.79, R.80, C.90, R.14) concerning night work for young persons which need to be revised to complete the follow-up of the 1987 Recommendations.

8. The 1987 list should certainly be reviewed and updated to take account of revision requests or projects which have arisen in the past eight years. The Working Party could do this, and to assist it the Office has drawn up an initial list of requests made during sessions of the International Labour Conference and other ILO meetings since 1987 which have not yet been examined by the Governing Body. These relate to the following issues:

— Migrant workers. The 1987 European Regional Conference adopted a resolution requesting the ILO to carry out a comparative study of certain aspects of current law and practice concerning migrant workers and their families in Europe, with a view to the adoption of appropriate rules. Furthermore, it requested that a survey be prepared on the labour and social security standards applied to workers engaged in project-tied work and to examine the possibility of drawing up international guidelines on the basis of the relevant international labour standards.

— Hours of work. The question of the revision of existing Conventions on hours of work (Conventions Nos. 1 and 30) and/or the adoption of new standards on working time arrangements has been pending for a number of years. The last Meeting of Experts on Working Time (1993) recognized that certain provisions of Conventions Nos. 1 and 30 did not reflect recent developments

5 Document GB.262/LILS/3, para. 9.
6 The detailed, updated list is included in document GB.261/LILS/3/1, Appendix II.
7 The adoption of two instruments of general scope on night work in 1990, Convention No. 171 and Recommendation No. 178, should also be recalled.
in working time arrangements, but it was unable to reach consensus as to the revision of these Conventions.

— **Cooperatives.** Two meetings of experts, held in 1993 and 1995, recommended the revision of the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127) to extend its scope of application to all member States and, possibly to convert it into a Convention.

— **Maximum weight.** Preparatory work for the revision of the Maximum Weight Convention, 1967 (No. 127), is under way; the matter may be submitted to the Governing Body shortly as a suggestion for the agenda of the Conference.

— **Benzene.** The revision of the Benzene Convention, 1971 (No. 136) was proposed during the Tenth Session of the Chemical Industries Committee (1988).

— **Workers’ housing.** The Eleventh Session of the Building, Civil Engineering and Public Works Committee (1987) recommended the revision of the Workers’ Housing Recommendation, 1961 (No. 115).

Several specific requests for revision which have been presented to the Governing Body or to the Conference could also be included on this list. 9

II. The use of revision criteria

9. The Working Party’s mandate stipulates that it “should also examine the question of the criteria that could be applied to the revision of standards”. 10 This issue was taken up a number of times during discussions held by the LILS Committee in April 1995. On that occasion, the Government group made specific reference to a document that listed a series of reasons for the drop in the rate of ratifications of ILO Conventions since the beginning of the 1970s. 11 Some quantitative or qualitative criteria may be defined taking these reasons as a point of reference.

10. Firstly, the **rate of ratification** of a Convention is a quantifiable criterion that must be taken into consideration, given that the principal aim of revision is to increase this rate and remove obstacles to the ratification of Conventions. The other criteria proposed are not directly quantifiable. The question of the general scope of the Conventions has frequently been cited: Conventions should focus on principles of universal application, even though their scope might be limited from the geographical standpoint or from that of the sectors of economic activity covered (sectoral Conventions). Emphasis has also been placed on the criterion of **simplicity** — recent Conventions contain provisions that are too detailed or that

9 The representative of Germany on the Governing Body proposed including the revision of the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) among the suggestions for the agenda of the Conference in 1994. During the June 1995 Session of the Conference, the Employer Vice-Chairman of the Committee on the Application of Standards recommended the revision of the Termination of Employment Convention, 1982 (No. 158).

10 Document GB.262/9/2, para. 52.

11 *Standard setting in the ILO: An IMEC point of view*, Nov. 1993, 11 pp. (hereafter “IMEC paper”). IMEC groups together governments from the market economy industrialized countries. See also document GB.262/LILS/3, para. 28.
are ambiguous, and therefore need to be revised. Furthermore, the need for flexibility has often been recalled — rigid provisions should be avoided in Conventions and more systematic use should be made of flexibility clauses.

11. These are the four criteria that the LILS Committee might propose for a policy vis-à-vis the revision of standards. So that the Working Party can take its decisions in full knowledge of the facts, the actual relevance of these criteria needs to be ascertained.

12. With respect to the criterion of ratification rates, the Office carried out a comparative analysis of Conventions basing itself on two groups of instruments. The above-mentioned qualitative criteria were tested on the most ratified Conventions, that is, Conventions which have been ratified by 50 per cent or more of member States. The list of these Conventions can be found in Annex I to this document. The same criteria were then applied to Conventions having received few ratifications and Conventions which can be objectively considered as outdated. The following categories were recorded: (a) Conventions pre-dating 1985 that have not come into force; (b) Conventions that have been “left dormant” as decided by the Governing Body; (c) Conventions (pre-dating 1985) which have received less than 20 ratifications, i.e. those that have been ratified by less than approximately 10 per cent of member States. The list of these Conventions can be found in Annex II to this document. The results of this empirical analysis will be summarized below.

13. As far as the criterion of universality is concerned, there is a definite relationship between the rate of ratification of a Convention and its general or limited scope of application. What is more, it has become apparent that Conventions of general application have on the whole a slightly longer life span, or, a contrario, that sectoral Conventions have been revised more frequently. Thus, all the most ratified Conventions have a universal scope of application or, at least, a very extended one. 12 Likewise, it appears that almost two-thirds of Conventions which have received few ratifications relate to a specific sector of activity (plantations, dockers, various sectors in respect to hours of work ...) and/or apply only to some member States. 13

14. The criterion of simplicity, whereby Conventions should primarily contain general principles and not provisions considered to be too detailed or ambiguous, was tested in an empirical manner, although there is inevitably an element of subjectivity involved. The content of standards, or the manner in which they are drafted, would appear to have a significant influence on the rates of ratification of Conventions. Conventions which are limited to a few basic provisions as a rule are accepted much more favourably by member States than long, detailed ones. However, useful though this criterion is, it can only be applied with reference to the actual subject of the Convention. Many of the most

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12 The criterion of universality has more limited application in the case of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (relating to migrant workers) and the Underground Work (Women) Convention, 1935 (No. 45). These Conventions have however been ratified by 115 and 95 member States respectively.

13 Eight of these Conventions relate to workers in non-metropolitan territories and 17 to seafarers. In both cases, they only apply to some Members. We also recall that Conventions respecting seafarers often contain stricter conditions for entry into force.
ratified Conventions are built around the recognition of a basic principle in conjunction with a minimum of supplementary provisions. Conventions Nos. 87 and 98 are particularly illustrative of this sort of “Convention of principle”. But there are also other types of provisions which the Conference has successfully applied, in particular Conventions based on prohibitive rules, on clearly defined legal requirements, or on reciprocal relationships between member States. As a general rule, these Conventions do not seek to impose detailed regulations on national legislators and governments. They establish principles or limits respecting the competence of each Member to decide on regulations and legislative and other provisions, in accordance with national circumstances, to give effect to international standards. Conversely, in the list of Conventions which have received few ratifications there is a considerable number of Conventions which include specific requirements; these are sometimes numerous and relate to points of detail, and invariably raise serious difficulties for incorporation into national law.

15. It has been noted that the criterion of the degree of detail in Conventions would seem to be a relative one. On the one hand, there are a number of exceptions and, on the other, it would certainly be necessary to take an additional criterion into account, namely the field to which a Convention relates. For example, the list of Conventions which have received few ratifications includes ten dealing with the same field, hours of work. Some of these Conventions are fairly detailed, whilst others contain only succinct provisions or take up a general principle; however, they have all received few ratifications and many of them have not even entered into force. It would appear then that the area to which a Convention relates matters just as much as its form or even its content, some areas lending themselves to the adoption of standards which will have good ratification prospects, whilst others prove to be unrewarding despite repeated attempts to revise existing standards or adopt new ones.

16. The fourth criterion proposed, flexibility, corresponds to a constitutional obligation. On the basis of article 19, paragraph 3, of the Constitution, Conventions have, right from the start, recognized the possibility of exemptions, dispensations and other forms of flexibility in favour of developing countries. Some Conventions are both flexible and precise, and there is in all likelihood a correlation between how well they are drafted and their high rate of

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14 It is not really possible in this document to enter into an analysis of the various legal techniques used by the Conference. These are fairly diversified and certainly deserve to be better known by the negotiators within the Conference’s technical committees. For a Convention that defines a series of illicit measures, giving national legislation free rein as to the implementation of application procedures and conditions, see the Abolition of Forced Labour Convention, 1957 (No. 105). For a prohibitive rule of a general scope incorporating a few exemptions, see the Underground Work (Women) Convention, 1935 (No. 45). For Conventions relating to clearly defined rights, see in particular the Protection of Wages Convention, 1949 (No. 95), or the Weekly Rest (Industry) Convention, 1921 (No. 14). For a Convention concerning an issue of an international nature and based on reciprocity, see the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).
ratification. However, the relevance of this criterion is difficult to assess because it is not clear-cut, and also because the inclusion of flexibility clauses does not appear to exert a positive influence on the ratification rate of Conventions. Consequently, Conventions that are ratifiable in part have not achieved the results expected in terms of ratification. Conversely, the most ratified Conventions as a rule have very few flexibility clauses. Such clauses should therefore not be seen as a panacea to facilitate ratification. However, flexibility takes on multiple forms, beyond specific clauses, and many of the most ratified Conventions are drafted in a way that is both flexible and precise.

17. The Working Party is invited to consider the use of the proposed criteria, and also how appropriate they are for assessing revision requirements. The use of criteria would appear to have considerable advantages. They allow greater progress to be made than the case-by-case approach in establishing parameters for the policy to be applied to revision, and also perhaps to the adoption of new standards. Taking a quantifiable criterion and the rate of ratification as a starting point, these criteria have resulted in several tendencies being highlighted which should encourage the Office, for example, not to concentrate its efforts on sectoral Conventions, to be wary of including excessively detailed provisions in Conventions, and to improve flexibility devices. The criterion of the rate of ratification is probably only of relative value as the Workers' group has often noted, but it does nevertheless constitute an objective indication of the extent to which member States agree to commit themselves to Conventions. The list of Conventions that have not come into force, are dormant or have received few ratifications (included in Annex II to this document) could serve as a basis for the Working Party to identify the Conventions which should be revised on a priority basis or to which other measures, to be examined below, should be applied.

18. There is one other criterion that could be introduced, namely, the sphere to which a Convention applies; it is a criterion whose importance emerged clearly during the analysis. Of the 58 Conventions listed in Annex II, 80 per cent relate to four spheres: hours of work, social security, seafarers, and workers of non-metropolitan territories. Setting aside the last category, which concerns only a few member States, it becomes apparent that ILO revision efforts have already focused on these same areas in the past. In respect of hours of work, since the 1960s, a number of unsuccessful revision attempts have been made. With respect to social security and seafarers, the list in Annex II includes both revised and initial Conventions. However, as with the "degree of detail" criterion, it would be misleading to apply this criterion without reference to the subject-matter of the Convention. A low rate of ratification may simply reflect the fact that the particular sphere dealt with is not conducive to standard setting; and a high rate may be altogether compatible with a Convention that is technically obsolete.

For an example of a Convention drafted in a flexible manner but nevertheless precise on a number of points, see the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), which has received 99 ratifications.

See, for example, the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (16 ratifications). In respect of the various flexibility clauses, see document GB.244/SC/3/3 adopted by the Governing Body in 1989.
Irrespective of the proposed criteria, therefore, a distinction needs to be made among the standards in order to identify those that might be most suitable for revision.

III. A conceptual framework

19. During the April 1995 discussions in the LILS Committee, several speakers, including the spokesperson for the Government members, emphasized the need to establish a conceptual framework to serve as a guide for the revision of standards and for the drafting of new Conventions. A conceptual analysis as recommended within the LILS Committee would not seem to be in any way superfluous. In fact, since the 1960s the Conference and the Governing Body have periodically discussed the evolution of the standard-setting system and the measures to take to correct its shortcomings. This Working Party is the fourth serious attempt to do so. As early as 1963 the Director-General’s Report to the Conference emphasized the need to revise and abrogate certain standards and proposed the establishment of a technical revision committee. The in-depth study of international labour standards carried out in 1974 was the starting point for a second phase. It contained a detailed analysis of most of the issues that are still being discussed today and proposed numerous solutions that served as a basis for the activities of the Ventejol Working Party in 1976-79. The third phase began with the Director-General’s Report to the Conference in 1984, and ended in 1987 with the publication of the report of the second Ventejol Working Party. Thus the standard-setting system has regularly been called into question over the past 30 years, but it seems that none of the previous attempts have been particularly conclusive. To ensure that the fourth attempt, initiated in 1994 by the Director-General’s Report to the Conference, does not encounter the same obstacles as the previous three, it is imperative for the Working Party once again to undertake an in-depth study, which takes into account changes that have occurred since previous studies, and then to make its decisions accordingly.

20. The Conventions and Recommendations as a whole can be divided into four categories of instrument: those dealing with the basic rights of working men and women; the other instruments considered to be of priority interest; instruments dealing with specific issues such as working conditions, safety and

17 See document GB.262/9/2, para. 23: The Government members “... considered that (...) it would be advantageous to complete a conceptual framework for the revision of standards in order to proceed with this urgent work so that Conventions would be relevant to current and future needs and ratified by many countries. Such a framework could also apply to the drafting of new Conventions. In this area they also attached importance to other factors, such as the need to have more in-depth discussions prior to establishing new standards, so that problems could be resolved and a maximum number of ratifications attained.”


19 Document GB.194/PFA/12/5.


health, and social security; and, lastly, a number of these latter instruments which are now outdated and which could, as appropriate, be revised, abrogated or left dormant.

(a) Basic rights of working men and women

21. As the Social Summit in Copenhagen has shown, the Conventions on the basic rights of working men and women have in recent years acquired rather special importance. The Conventions concerning freedom of association, forced labour and discrimination account for approximately 3 per cent of all international labour Conventions and almost 50 per cent of the most ratified ones. The authority and renown of the Organization within the international community are to a large extent the result of these few Conventions. None of them is a revised Convention, and more has been deemed to require revision. From the standpoint of standard-setting policy, these Conventions should not be re-examined.

(b) The other priority Conventions

22. Apart from the Conventions on basic human rights, the Governing Body has already considered that there are other priority instruments that should be looked at every two years as part of the regular supervisory procedure. In addition to the six Conventions cited above, they include the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Employment Policy Convention, 1964 (No. 122), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Governing Body felt that these Conventions played a key role in the standard-setting system and that their application should accordingly be supervised more frequently than that of other instruments. Except for Convention No. 129, it is significant that their rate of ratification is more or less the same as that of the most ratified Conventions.

23. These Conventions would not appear to call for re-examination, in so far as they do not seem to be concerned by the need for revision. The Working Party might however contemplate supplementing the list of priority Conventions so as to establish, as it were, a hard core of international labour Conventions. Should it opt for extending the list of priority Conventions, the Working Party should examine each new proposal on its merits, bearing in mind the importance of the subject-matter of the Convention, of its relevance and of its rate of ratification and future prospects. It could then propose that the Governing Body adopt specific measures to mark the priority nature of the Conventions, whether from the standpoint of the supervisory machinery or of promotional activities.

(c) Instruments relating to specific spheres

24. There are a lot of instruments that are not part of the hard core referred to above. They relate to specific spheres such as working conditions, industrial relations, safety and health and social security, or else they protect specific categories of workers. It is here that the international labour standards can be seen

24 Document GB.258/LILS/6/1.

25 On 1 June 1995, Convention No. 81 had received 115 ratifications; Convention No. 129, 35 ratifications; Convention No. 22, 84 ratifications; and Convention No. 144, 75 ratifications.
in all their variety, here too that one finds most of the possible candidates for revision, the greatest proliferation of instruments and the most acute problems of ratification.

25. From the point of view of the content and form of Conventions, it will be recalled that, before they can be ratified, instruments relating to such issues come up against considerations of national sovereignty and independence, and against constraints arising from increasingly detailed and complex legislative provisions and regulations, judicial decisions and administrative practices. To prevent obstacles of this nature proving too much of a deterrent, the distribution of competence between international standards and national legal systems must be properly taken into consideration. There are various legal techniques to achieve this; we will refer to three of them, but this is not an exhaustive list. The first two were widely used during the first few decades of the Organization, the third could lead to a renewal of standard setting in this area.

26. Firstly, for a long time Conventions were limited to recognizing a fundamental principle (generally accompanied by some exceptions or dispensations), or specifying a small number of succinct, precise and clear rules. Several examples of this sort of Convention were mentioned earlier. The content and form of the instruments facilitated their incorporation into international legal systems. If the Organization's constituents wish to revert to this practice, the Working Party should consider which procedures and methods would enable the Conference to be more rigorous and improve the level of drafting of the instruments it adopts. Some proposals along these lines will be examined in the second part of this document, under "Methods of revision".

27. When the diversity of legislation and national practices has appeared to be too great, the Organization has often employed a second technique, the adoption of Recommendations instead of Conventions. This was in fact the case in the area of industrial relations and during the 1950-70 period.

28. The third method would consist of formulating Conventions on the basis of international coordination objectives. In short, this would involve leaving it to national legislation to determine the conditions and modes of enforcement of international standards and focusing on the definition of guidelines, of specific requirements or of incompatibilities. The principle of subsidiarity, which aims to safeguard the autonomy and diversity of national legal systems whilst establishing common objectives for them at the international level, could prove to be extremely useful in this connection.

29. In addition, the Working Party could draw up general guidelines for drafting new standards, which would be particularly useful for delegates sitting on the technical committees of the Conference.

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26 See para. 16 above.

27 See document GB.261/LILS/3/1, paras. 36-38.
(d) **Outdated instruments**

30. Finally, there are a number of instruments that should be considered outdated or obsolete, because they have not kept up with technological change, because social values have evolved, or in some cases because they set requirements that most member States have been unable to comply with. Most of these instruments are listed in Annex II.

31. However, this list has been compiled to the specifications of the LILS Committee, i.e. using the rate of ratification of the Conventions as the main criterion. Yet there are some Conventions that could also be considered out of date but which, because they have been widely ratified, are not on the list. For example, the Underground Work (Women) Convention, 1935 (No. 45), is perhaps not very relevant to modern conditions and could well do with revising. Although it is one of the Conventions that has been ratified by more than half of the member States, it has in recent years been the subject of eight denunciations *stricto sensu*. The fact is that Convention No. 45, which bans the employment of women in underground mining, with very few exemptions, is not really compatible with the current trend towards equality of treatment of men and women in employment. The Working Party might therefore wish to amend or supplement the list of Conventions in Annex II, on a case-by-case basis, in order to take these special circumstances into consideration.

**Proposals**

32. The following proposals are submitted to the considerations of the Working Party:

(a) the Working Party could agree that the existing instruments relating to the *basic rights of working men and women* should not be re-examined within the context of the policy vis-à-vis the revision of standards;

(b) the Working Party is invited to examine the list of *priority Conventions* which could form the hard core of international labour standards and do not appear to call for revision;

(c) referring to the list in Annex II, the Working Party could decide to apply *revision criteria*, on a case-by-case basis, in order to identify those Conventions or issues which should *first* be examined with a view to revision;

(d) in the course of the exercise referred to in paragraph (c) above, the Working Party could consider general guidelines as to the *content* and *form* of Conventions, to be used in future by delegates to the Conference for the revision of existing standards or the drafting of new instruments;

(e) the Working Party is invited to draw up a list of *outdated instruments* which should be revised, abrogated or left dormant along the lines set out in the second part of this document.

33. The Working party is invited to examine the proposals in paragraph 32 above, to decide what action to take and to present its recommendations to the Committee on Legal Issues and International Labour Standards.
Second part — Other issues

34. This second part will examine in order the other questions raised in paragraphs 67 and 30 of document GB.262/LILS/3, namely: methods of revising standards, denunciation periods for ratified Conventions, the consistency of the standard-setting systems, certain issues relating to ratification, and the evaluation of standards.

I. Methods of revision

35. In a previous report, it was noted that the ILO had opted for the total revision of instruments, following the double-discussion procedure at the Conference. 28 This method involved updating or supplementing the provisions of an initial Convention by adopting a new revised instrument, independent of the initial Convention, which was given a new number. Overall, the approach adopted rendered the revised Conventions more complex and more detailed. It also led to the existence of two Conventions on the same subject, and thus to a certain duality of standards. When the first revisions were undertaken at the beginning of the 1930s, the constituents had assumed that the new revised Convention would progressively replace the initial Convention, which itself would in time lapse. The duality of standards had been envisaged as a temporary feature, and therefore less important. In practice, the initial Conventions that were already in force remained so, and this contributed to the proliferation and overlapping of Conventions which are the object of such criticism today. Lastly, the double-discussion procedure at the Conference was considered cumbersome and poorly adapted to the needs of partial or technical revisions of certain instruments.

36. It appears therefore that the method of total revision and of the double-discussion procedure should no longer be encouraged. The Governing Body has opted to examine other possibilities that may be better adapted to the wide range of needs and situations. With this in mind, we will address separately questions of procedure and questions relating to the form of the revised instruments.

1. The procedures

37. Two types of approach have been proposed: on the one hand, more frequent use of the single-discussion procedure, and, on the other, the implementation of the simplified revision procedure adopted by the Governing Body in 1965.

38. The main advantage of the single-discussion procedure is to shorten the revision period of an instrument by a year and to generate savings on the preparatory work budget. In the event of partial or technical revisions, a single discussion could suffice. In this connection, we would note that in 1995 the Conference adopted the additional Protocol to the Labour Inspection Convention, 1947 (No. 81) in the course of a single discussion. Several revision proposals, which were mentioned in the first part of this document, could be carried out under this procedure. 29 However, beyond a certain level of complexity, it is

28 Document GB.262/LILS/3, para. 67(3).
29 See, for example, para. 8 above.
necessary to have a double discussion. It would then be possible to apply the provisions of Article 14(2) of the Constitution. This provides for the Governing Body to convene a technical preparatory conference, or to use other measures, to ensure thorough technical preparation and adequate consultation of the member States. This provision was introduced into the Constitution in 1946, with the specific aim of facilitating technical revisions and speeding up the process of drafting standards by not resorting so often to the double-discussion procedure. \(^{30}\) From the point of view of drafting quality, it could be thought that a technical conference would allow the text of a Convention to be prepared with the desired conciseness, precision and flexibility, perhaps more easily than during negotiations in a technical committee at the Conference. Another solution that was recently tried involves the Conference holding a preliminary general discussion on a subject before embarking upon the final drafting procedure. A preliminary discussion in 1994 thus clarified the real revision needs of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

39. The second possibility would be to implement the simplified revision procedure adopted by the Governing Body in 1965, which has never yet been used. \(^{31}\) This procedure had three aims: to eliminate the old Conventions which had not achieved their aims or which, on the contrary, had entirely fulfilled their missions; to amend non-controversial technical provisions without revising the Convention as a whole; and to allow the Governing Body and the Conference to carry out ongoing and systematic revision work for several years. Under the 1965 procedure, the Governing Body has to institute a preparatory discussion to ensure that there is consensus between the three groups as to the objective and scope of each revision. When the conditions are met, the Governing Body includes the item on the Conference agenda, referring it to a technical revision committee appointed in accordance with article 8 of the Standing Orders of the Conference. This tripartite committee only meets if need be, not during each session of the Conference. The Conference is the only competent body to decide on the number of members of the Committee and its composition. Provision has been made for the Committee to have limited numbers including, for example, some members whose mandate would last several years, which would help to give a certain continuity and a greater coherence to its work, and other ad hoc members, specialists in the subject under revision. In 1965 the Governing Body considered that a matter being revised in accordance with this procedure would be sufficiently well defined and straightforward for the technical revision committee to complete its duties in a few sittings, without adding to the workload of the Conference.

2. The form of the instruments

40. The most usual method to revise a Convention has remained the total revision method through the adoption of a new Convention on the same subject. Due to the limitations of this method and problems encountered, attempts have been made, on the one hand, to group together instruments relating to the same field and, on the other, to use partial revision methods.

\(^{30}\) See document GB.262/LILS/3, para. 62.

\(^{31}\) See also document GB.262/LILS/3, paras. 65-66.
41. The grouping together of Conventions by sphere of application has taken two similar forms, the adoption of framework Conventions and the adoption of instruments that could be called codifying Conventions. In the field of social security, for example, in 1952 the Conference adopted a framework agreement, the Social Security (Minimum Standards) Convention, 1952 (No. 102), which provides minimum provisions for the various branches of a general social security scheme; specialized Conventions in a way then become grafted to this common trunk. The same objectives, aiming to reorganize the standard-setting system in a coherent and flexible manner in relation to seafarers, led to the adoption of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Furthermore, the codification of sectoral Conventions was undertaken in particular in respect of minimum age, with the adoption of the Minimum Age Convention, 1973 (No. 138), which revised ten previous Conventions. Revisions of this kind show the considerable effort the Organization has made to render the standard-setting system more balanced. In theory, the adoption of a framework agreement or even of a codifying Convention could be considered for every field of activity. However, it seems that the results achieved have not on the whole lived up to the hopes placed in these solutions and the considerable efforts implied by groupings of this kind.

42. After having experimented for almost half a century with the various possibilities for the full revision of certain Conventions, from 1980 onwards the Organization took another approach, the partial revision of Conventions in the form of the addition of protocols. The proposal appeared in the 1979 report of the Ventejol Working Party; this group had recommended that this proposal be studied further, but it does not appear that the Governing Bodywent on to discuss it subsequently. ³² The innovation proposed resulted firstly from a desire to simplify; it was even foreseen that the drafting of an additional protocol would not require the establishment of a special Conference Committee. The form of the additional protocol has the advantage of leaving most of the provisions of the original Convention intact and not adding a new Convention to the standard-setting system. It appears to be suited to the objectives of limited revision, when it is a matter of supplementing the provisions of a Convention, or amending an article or a limited number of provisions, but it would not be appropriate for a far-reaching revision, nor in cases in which the Conference might wish to close the original Convention to new ratifications.

43. Since 1980, the Conference has adopted three additional protocols. In the first of these, the object of the protocol was to amend Article 1 of the Plantations Convention, 1958 (No. 110), relating to its scope of application. The Governing Body had recommended the partial revision of the Convention in response to a number of requests, particularly from developing countries, which considered that the extent of the field of application was a major obstacle to the ratification of the Convention and the reason for the denunciations that had already occurred. In the second case, it took steps to introduce derogation possibilities and other measures to moderate the Night Work (Women) Convention (Revised), 1948 (No. 89). Lastly, in 1995 a protocol was adopted not to amend,

but to supplement a Convention. In the case in point the provisions of the Labour Inspection Convention, 1947 (No. 81) were extended to the non-commercial services sector. In all three cases, a protocol was adopted following a single-discussion procedure and the preparatory work was relatively less extensive than in the case of a complete revision. With respect to ratifications, the results are still limited, but it should be noted that the use of additional protocols is only recent and that new initiatives and improvements may be introduced over the coming years.

II. Denunciation periods

44. The Governing Body decided to include in the Working Party’s mandate the question of the denunciation periods of ratified Conventions. This question has been dealt with in a previous document to which we will refer. It will be recalled that the final provisions of Conventions adopted by the Conference are standard provisions found in most instruments. Three periods should be mentioned: an initial period of validity of the Convention, determined by the date of its initial or objective entry into force; the period during which denunciation is possible; and, lastly, a third period during which the Convention continues to be in force if it has not been denounced, and on the expiry of which the denunciation-validity cycle is perpetuated. In ILO practice, the duration of the first period has generally been ten years; barring exceptions, the duration of the denunciation period has been one year. As to the third period, the duration was fixed at ten years, in most cases, after 1932. The Government group and the Employers’ group have wished to shorten the periods and to have them stipulated in the denunciation clauses of future Conventions.

45. In respect of the denunciation of ratified Conventions, international practice varies widely. Taking the area of human rights as an example it can been seen that the two United Nations covenants, the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), do not contain denunciation clauses. In this case, denunciation is governed by the general rules of the law of treaties or, depending on specific cases, by the provisions of the Vienna Convention on the Law of Treaties (Article 56). On the other hand, the United Nations Convention on the Rights of the Child (1989) provides in Article 52 that any State party may denounce it at any time, the denunciation becoming effective one year later. The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) contains in Article 65 a denunciation clause stipulating that ratification binds a contracting party for an initial period of five years; once that period expires, the Convention may be denounced at any time following a period of notice of six months. In the case of the American Convention on Human Rights (1969), the length of initial validity provided for in Article 78 is also five years; denunciation is then possible at any time, following a period of notice of one year.

33 Document GB.262/LILS/3, paras. 30-31.
34 In this case the denunciation will only take effect one year following registration.
46. Faced with such diversity it has not been possible to pinpoint signs that indicate a relation between denunciation periods and the level of ratification, nor in fact between the shortening of such periods and an increase in denunciations. The ILO's experience is no more conclusive. It is frequently forgotten that the Forced Labour Convention, 1930 (No. 29), can be denounced at five-yearly intervals, after an initial period of validity of ten years. However, no member States have denounced it. In contrast, the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), includes the standard provisions on ten-year denunciation cycles, which has not stopped it achieving almost the highest rate of ratification, behind Convention No. 29. In ILO experience denunciation periods have very little, if any, influence on the frequency of denunciations, and yet these periods are seen both by governments and by employers as an obstacle to possible ratification.

47. This being the case, and if the Working Party so desires, the Organization could return to the practice used in Convention No. 29 and other Conventions of the same period. The initial period would thus remain unchanged, being ten years; but the renewal of validity of the Convention would take place at five-yearly intervals, instead of the current ten.

48. A second amendment could be proposed, namely the period during which a member State may exercise its rights of denunciation. In current practice denunciation may take place for one year after the initial ten-year period, or subsequent period, calculated from the date of the initial or objective entry into force of the Convention. This provision seems to have been a source of difficulty, and it would certainly be simpler and clearer for a member State to be able to denounce a Convention ten years (or five years depending on individual cases) after it has ratified it (a “subjective” condition) and not after the date of entry into force of the Convention (an “objective” condition). Each member State would thus be aware of the dates when it could exercise its right of denunciation, which would be calculated in relation to the date of registration of the ratification.

49. Moreover, in 1971 the Governing Body adopted principles relating to consultations to be held when a government is contemplating a denunciation, and similar consultations are provided for in Article 5(1)(e) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).35

III. The consistency of the standard-setting system

50. In a previous document, the main questions arising in respect of the consistency of the standard-setting system were indicated: the proliferation of Conventions in the absence of any overall or coordinated view, the overlapping in some areas of Conventions on the same subject-matter, and the question of the duality of standards, in particular when two Conventions dealing with the same subject have divergent aims or provisions.36 On this standard-setting policy level, the quest for solutions may take the following two complementary

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35 See document GB.262/LILS/3, para. 31.
36 Document GB.262/LILS/3, paras. 35-37.
approaches: the abrogation of outdated Conventions, and the definition of the Organization's objectives with respect to standards.

I. Abrogation prospects for outdated Conventions

51. On several occasions, the first time being in 1929 and the most recent in 1987, the Governing Body has addressed this matter without achieving consensus on concrete solutions. During the most recent attempt in 1984-87, the Ventejol Working Group examined the question but did not formulate any recommendations. We will not present the examination here in its entirety as it is fairly extensive, but we will recall the principal aspects of the problem because they remain at the core of the revision policy.

52. When the Governing Body first had to examine the question of the revision of standards, in accordance with Convention provisions whereby such an examination should be carried out every ten years, two basic options were considered. Firstly, the revision of a Convention could abrogate the old Convention and replace it by a new one; secondly, the revision could let the old Convention remain, which would mean the existence of two Conventions dealing with the same subject-matter.

53. The idea of abrogation certainly had the advantage of simplicity, but it posed two major problems, of a legal and practical nature. From the legal point of view, the Office underlined the fact that the Conventions constituted a network of reciprocal obligations between those member States that had ratified them and that through ratification they acquired a certain contractual status. The Conference did not have the power to abrogate a Convention which it may have adopted but which the member States had, as it were, appropriated through ratification. This position was contested by two Employer members from the Governing Body who considered that Conventions should be seen as “conditional international laws” which could be either accepted or refused by member States, but which they could not amend. From the practical point of view, objections were raised that abrogation could have the effect of cancelling out social progress achieved under the previous Convention, whilst the member State remained free to ratify the new revised Convention or not. This practical argument turned out to be decisive and has been brought up repeatedly in all discussions held on the subject, including the discussions of the Ventejol Working Group in 1984-87. It is still just as relevant, especially in view of the possible inclusion in the Final Articles of future Conventions of a clause authorizing the Conference to terminate the obligations they stipulate. Whilst this is legally possible, a clause of this kind would encounter the objections mentioned above.

37 ibid., para. 9.

38 cf. Minutes of the Governing Body, 38th, 43rd and 45th Sessions, 1928 and 1929; Record of Proceedings of the Twelfth Session of the International Labour Conference, Vol. I, 1929; Minutes of the 63rd Session of the Governing Body, June 1933. During the period 1928-33 intense and thorough discussions took place on the policy to adopt with respect to the revision of standards and on possibilities to abrogate ratified Conventions; subsequently, the Governing Body essentially referred to the discussions held during this period and the choices made at that time without entering into any further in-depth examination of the actual details.

54. The second option was to organize the coexistence of two Conventions, an initial and a revised one. From this perspective the legal difficulties arising from ratifications were set aside at least in the short term, but the major disadvantage of this approach was recognizing that different and even contrasting rules could apply to the same subject. The opponents of this solution maintained that it would lead to a duality of standards which was not in keeping with the spirit of the Treaty of Versailles and the ILO's mandate. In 1929 the Conference declared itself in favour of the solution of coexistence and against abrogation. On that occasion the Chairman of the Standing Orders Committee explained that it had been necessary to choose between two systems and that the system chosen had been the lesser evil.  

55. If abrogation possibilities are to be re-examined it would be advisable to propose measures of a limited scope in three different sectors, these being:

- the 13 early Conventions that did not enter into force. In 1964 the Governing Body decided to use the new simplified revision procedure to eliminate Conventions that had not entered into force and that were closed to ratification, as well as Conventions that had not entered into force and which remained open to ratification but had been revised and had only limited prospects of coming into force;  

- Conventions which are objectively outdated because they deal with occupations or jobs that no longer exist. Among Conventions left dormant and listed in Annex II there are some cases of this kind, such as the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15);  

- the abrogation or replacement of a certain number of Recommendations. Given that the legal difficulties arising from ratification do not apply to Recommendations, the Conference could decide with a two-thirds majority to abrogate or replace those Recommendations which are clearly outdated or no longer applicable. The 1987 Report of the Ventejol Working Party listed under the heading “other instruments” a certain number of Recommendations to which these measures could be applied.  

56. In addition, if the Working Party wished to examine the question of the abrogation of outdated Conventions on a wider scale, it could consider including an abrogation clause in the Final Articles of future Conventions. With respect to early Conventions, it would be possible to draw up a Convention of a formal nature, along the lines of the Final Articles Revision Convention, 1961 (No. 116). In this respect the real difficulties are less of a legal nature than of a practical

41 Document GB.160/12/27, para. 6. The situation of old Conventions that did not have a revision clause should also be examined.
one, and it is important to find out if an "outdated" Convention continues to uphold social progress measures at the national level, if it no longer exerts any influence, or if in fact it has become a hindrance to progress as a result of changed circumstances.

57. The consent of the three groups of constituents, at the level of the Organization and at the level of its individual member States, seems essential in order to find a lasting solution to the question of the abrogation of outdated Conventions. The following approach could be considered. The first stage would be for the Working Party to identify the Conventions it considers to be outdated and which could be abrogated. Within each member State consultations could take place between the constituents to make sure that the Convention(s) proposed no longer exerts an influence on social progress. If this is the case, the denunciation process could be initiated, on a conditional basis, in other words to the extent that the other member States having ratified the Convention adopt the same approach. These consultations could be conducted on the basis of Article 5(1)(e) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), or along similar lines in those member States that have not ratified Convention No. 144. When the denunciation(s) came into effect, the Conference could decide with a two-thirds majority to abrogate the outdated Convention. This procedure would be in accordance with the provisions of Article 54 of the Vienna Convention on the law of treaties and with the opinion expressed by the Office in 1929 on the only occasion that there has been an in-depth examination of the question of abrogation. 43 A procedure of this kind could also apply in the case of Conventions which have received few ratifications. The list in Annex II includes nine Conventions which are in force and which have five effective ratifications or less. The total or partial abrogation of these Conventions could be considered by the Working Party. It is, however, clear that this procedure could not be implemented if a Convention has been ratified by a large number of member States.

2. Instruments representing ILO objectives

58. When the Organization established a policy relating to the revision of standards it was observed that a choice had had to be made between two systems. This choice had been considered as the lesser evil because it meant the social progress achieved through the ratification of an old Convention would not be cancelled out, although at the same time there would be the coexistence of two Conventions and thus a certain duality of standards. After over half a century's experience of revision, it appears that the coexistence of various instruments dealing with the same subject-matter has increased in some areas and that it is likely to continue to do so. In a previous document it was noted, for example, that the Organization now has seven instruments relating to the night work of women, including four Conventions, two Recommendations and a Protocol, three of which are open to ratification. 44 This overlapping of instruments does

43 Minutes of the 43rd Session of the Governing Body, Mar. 1929, Annex IX; see also document GB.262/LILS/3, para. 40.
44 Document GB.262/LILS/3, para. 36.
probably not involve any major difficulties for constituents at the national level, but its adverse effects are taking their toll on the clarity and consistency of the Organization’s objectives, which is why from 1963 onwards the Conference has tried to remedy them. 45

59. The solution which has gradually emerged is the classification of standards into different categories. The second Ventejol Working Party (1987) established a list of 87 Conventions classified as “instruments to be promoted on a priority basis” and another list of 63 Conventions described as “other instruments”. This method has the advantage of identifying the Conventions and Recommendations that could be seen as the Organization’s current objectives and those which no longer are, without undermining the protection that old standards may still be providing. However, the Ventejol Working Party was not able to reach agreement on the conclusions to draw from this classification. It was foreseen that, for example, outdated Conventions would no longer be published in the compendium of international labour Conventions and Recommendations and that they would no longer appear on lists of ratifications. In practice, such provisions were only applied to a limited extent.

60. The classification established in 1987 could be brought up to date by the current Working Party which could then proceed as anticipated. The 1987 lists would be re-examined with the aim of establishing a list of Conventions which represent the Organization’s current objectives, it being understood that, barring exceptions, the duality of standards would not be permitted. However, two types of situation should be distinguished. In some cases the duality of standards affects the substance of provisions, in that there can be differences, or even contradictions, between the old Convention(s) and more recent ones. The example of Conventions No. 107 and 169 on indigenous and tribal peoples has already been mentioned, and there are others. 46 It is clear that the ILO should not have divergent or contradictory objectives and that it is for the Working Party to define in case of doubt which Convention represents the Organization’s current objectives. However, in other cases, the duality of standards is more of a matter of form, in that a recent Convention supplements or extends the provisions of an old one without there being differences or contradictions between them. Early Conventions can then play the role of interim objectives, but this relationship does however need to be explained, something which does not appear to happen sufficiently today. Thus, the recent Convention representing the Organization’s current objectives could be given prominence, and the Convention(s) representing the interim objectives could be listed afterwards and indicated as such. These indications would help to avoid too much confusion in the “other instruments” category between Conventions which can still be useful and others which no longer are.

61. This procedure would supplement and bring up to date the classification established between 1976 and 1987. It would remain to draw the practical conclusions and to determine the effects that the division of Conventions into two or more categories could have. A policy for the promotion of standards should be

45 Para. 58 above; see also document GB.262/LILS/3, paras. 65-66.
46 See document GB.262/LILS/3, para. 37.
applied to the first category of instruments which the Ventejol Working Party (1987) called “instruments to be promoted on a priority basis”. It has been noted that, of a total of 87 Conventions, 12 have only been ratified by 10 per cent or less of member States and 58 Conventions, that is two-thirds of the Conventions in question, have been ratified by less than 25 per cent of member States. There is thus a long way to go to achieve the objectives defined in 1987.

62. With respect to the “other instruments”, the working party should specify the applicable measures to be taken. To decide what these should be, it could take as a basis the 63 Conventions listed by the Ventejol Working Party (1987) or the list of the 58 Conventions included in Annex II, and modify and/or combine them as required. When it planned that these Conventions should no longer be included in ILO publications, the Ventejol Working Party probably proposed a measure that was too partial, but at the same time too radical. Again a distinction should be made between, on the one hand, the interests of the member States and the constituents at the national level and, on the other, the objectives of the Organization at the international level. From the point of view of the constituents and the member States which have ratified a Convention, even though it may be outdated, the instrument is still “active”; from the point of view of the Organization, the same Convention no longer represents a current objective and should thus become “inactive”. So there could be a set of Conventions labelled as “ILO objectives” and a group of international labour Conventions without this label, but which still remain valid and are still published, possibly in a separate volume. Furthermore, the Working Party could propose “leaving dormant” all or part of the group of outdated Conventions, as the Governing Body has already done to approximately 20 of them. In practice, leaving instruments dormant is tantamount to making the provisions of the Constitution of the ILO inactive with respect to certain Conventions.

IV. Questions of ratification

Ratification thresholds necessary for Conventions to enter into force

63. Since the adoption of the Hours of Work (Industry) Convention, 1919 (No. 1), when the Organization had fewer than 40 member States, the Conference decided that a Convention would enter into force after the registering of two ratifications. At the time, entry into force was immediate; in more recent Conventions it occurs 12 months after the registration of the second ratification. Although there are a number of exceptions to this standard provision, particularly in the maritime sphere, it has been a constant feature throughout the Organization’s standard-setting history. However, during the past few years the question of raising the minimum number of ratifications necessary for a Convention to enter into force has been put forward.

64. In the area of basic rights, it is true that ILO practice varies from that of other international organizations, which have stricter conditions for the entry

47 Document GB.262/LILS/3, para. 27
48 Document GB.262/LILS/3, para. 41.
into force of Conventions. Thus, the United Nations conventions on human rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979), only entered into force following their ratification by 20 States. In the case of the two Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, 35 ratifications were required. With respect to regional instruments, thresholds of ten ratifications were fixed for the Convention for the Protection of Human Rights and Fundamental Freedoms, 11 ratifications for the American Convention on Human Rights; the African Charter on Human and Peoples’ Rights stipulated entry into force following ratification by the absolute majority of the States members of the Organization of African Unity. These more strict criteria stem from the fact that human rights instruments establish universal values, and they are intended to apply to all the Organization’s members. From this point of view, ratification thresholds that are too low could run counter to the objective of universality. Conversely, thresholds that are too high could delay the entry into force of a Convention, and in this connection it should be recalled that the two United Nations Covenants took ten years to enter into force. It would be extremely difficult to attempt to define an optimum ratification threshold, but the fact is that the current threshold at the ILO is very low compared to other international organizations and there are far more member States than when it was decided upon.

65. With regard to Conventions concerning specific spheres, ratification firstly represents a commitment by a member State to observe standards that have been adopted within the framework of the ILO. A necessary condition for a Convention to become valid is the commitment of two member States. The Organization considered that this condition was sufficient. An argument in favour of raising the ratification threshold was that Conventions ratified by a very small number of member States congest the supervisory system and diminish the credibility of the standard-setting system.

66. The situation is different in the case of Conventions which relate to international issues because these Conventions are governed first of all by relationships of reciprocity. Moreover, to ensure that the effects of a Convention are felt internationally it is often necessary to reach a certain critical mass. In this connection we would recall that a number of Conventions relating to seafarers contain more stringent provisions for entry into force. Convention No. 147, for example, stipulates ratification by at least ten Members with a total share in world shipping gross tonnage of 25 per cent as a condition of entry into force. Criteria of this kind and recourse to certain forms of conditional ratification are widely used in the area of international economic cooperation agreements.

67. A higher ratification threshold could thus be envisaged for the entry into force of new Conventions. This threshold could also apply to Conventions that have been entirely revised, whilst the entry into force of additional protocols could be defined on a case-by-case basis, depending on the individual characteristics of each partial revision.

The problem of the ratification of revised Convention

68. With the benefit of hindsight it is clear that the Organization must attend to the serious problem of the ratification of revised Conventions, a problem that
the constituents could not have foreseen at the time when they established the revision policy. Most revised Conventions have been ratified by fewer than 40 member States and on the whole they have received fewer ratifications than the early Conventions that they revised. It is a matter of even greater concern that some early Conventions that have been left open to ratification have continued to receive more ratifications than the Conventions revising them, even after the adoption of the latter. These trends clearly run counter to the objectives set by the Governing Body and the Conference around 1930, and they oblige the Organization to review the basis of the revision policy it has applied to date.

69. The principle cause of the problem is the fact that the States which have ratified an initial Convention do not ratify the revised Convention, or if so only a minority of them do, and then very slowly. In other words, the substitution mechanism of the old Convention by the revised Convention has not worked as intended. As every member State is free to ratify a Convention or not, there are no means available to the Organization to try to make this mechanism work in a more satisfactory manner. As food for thought we would put forward a proposal, namely, to involve the member States that have ratified a Convention more closely in its revision. It is these member States which are, a priori, the most affected by revision, and it is also they which have the most experience as to the advantages and disadvantages of the provisions of the Convention to be revised. There are therefore valid reasons to place them at the forefront of a revision programme, for example within the framework of a technical preparatory conference, of the sort provided for in article 14(2) of the Constitution. One may assume that the draft revised Convention to come out of a preparatory conference would meet the needs and expectations of the constituents of these member States and that subsequently they would be more inclined to ratify the revised Convention, if the conference takes their opinions into account. This more direct involvement of the member States that have ratified a Convention in the outcome of its revision would perhaps be a way of rehabilitating the substitution mechanism.

70. If it did not appear possible to improve the rates of ratification of revised Conventions, the method of the complete revision of Conventions would definitely have to be looked at again. This method could be reserved for exceptional cases when the need is felt to overhaul an instrument completely. But the most usual method could become the partial revision of Conventions through the addition of protocols. The use of partial revision would mean not losing the benefit of the ratifications received by the Convention to be revised. Partial revision would avoid the dispersal of ratifications that currently occurs when two or more ratifications dealing with the same subject-matter continue to coexist. The question of the low rate of ratification of recent Conventions, often revised ones, would no longer exist as such. Lastly, a change in revision methods should help to counter the current proliferation of Conventions and to make the standard-setting system more consistent.

49 For more details on this subject, see document GB.262/LILS/3, paras. 32-34.
V. Evaluation of standards

71. The evaluation of standards has been previously examined in the framework of the reform of article 19 of the Constitution. It is recalled that in 1945-46 the constituents wanted, on the one hand, to encourage member States to explain why they had failed to ratify certain Conventions and, on the other, to establish a supervisory system for unratified Conventions and Recommendations. The reform was intended to help improve the ratification rates of Conventions and to identify revision needs. It led to the preparation of general surveys from 1955 onwards. These played an essential role in the supervisory system and there is no intention to modify them substantially. However, the existing procedures could be supplemented so as to provide a system for the evaluation of standards. The setting up of a system of this sort would mean, among other things, improving the measures necessary for evaluation and giving a specific body a determining role in the evaluation of standards. These two questions will be examined below.

72. Several measures or procedures have been introduced by the Organization to enable constituents to make known their proposals in respect of standard setting and to communicate their difficulties with ratification. However, some procedures are not used — or if so, very little — and the question may be asked whether the measures available today are sufficient to enable the constituents to express their requests and convey their reactions as to how applicable standards are to the socio-economic realities of the various countries.

73. The first procedure, which was originally intended to be used on a wide scale, is provided in article 19(5)(e) of the Constitution. This stipulates that a Member shall state the difficulties preventing or delaying the ratification of a Convention by way of reports, the form and periodicity of which will be decided by the Governing Body. In addition to general surveys, which continue to serve as a guide to the need to revise an instrument, these provisions could be helpful in the socio-economic evaluation of the Convention and in assessing reasons and needs which could lead to its revision. When the question of the revision of a Convention is raised, a possible approach would be for the Governing Body to ask the member States that have not ratified it for their reactions in order better to understand their difficulties, thus providing it with the necessary information to evaluate the appropriateness of the revision.

74. With respect to new initiatives or proposals, whether relating to revision or to the adoption of new standards, the Governing Body could have recourse to another procedure, mentioned in article 14(1) of the Constitution. This provides that, when settling the agenda for all meetings of the Conference, the Governing Body will consider any suggestion that may be made by the governments of the member States, by organizations representing employers and workers, or by any public international organization. These suggestions were requested up until the 1970s, and we know that a good many Conventions, particularly in the field of basic human rights, developed as a result of the initiatives of other organizations of the United Nations system or suggestions made by governments and employers’ and workers’ organizations. These proposals seem to be an excellent way for

50 Document GB.262/LILS/3, paras. 44-58.
constituents and other international organizations to communicate their concerns, and any criticisms they may have, with respect to existing Conventions. Over the past years this procedure has not been used, but it could be reactivated and be used especially for the evaluation of standards.

75. In addition to the implementation of evaluation measures, it is clear that the LILS Committee would have a decisive role to play. The Office could submit a report to the Committee, for example once each year, containing the information and suggestions received from the constituent or other international organizations, to enable it to determine revision needs in respect of standards, to address the difficulties encountered in connection with specific instruments, and to deal with other aspects of the standard-setting policy which involve the evaluation of standards. The LILS Committee would make recommendations to the Governing Body which could take them into consideration when making suggestions for the agenda of the Conference. 51

Proposals

76. The following proposals are submitted for the consideration of the Governing Body:

(a) the Working Party is invited to make recommendations as to how the revision of standards could be facilitated, such as by resorting more frequently to technical preparatory conferences or to a preliminary discussion stage before embarking upon the drafting of the standards, which could then, as appropriate, involve a single or a double discussion;

(b) the Working Party could reconsider the pros and cons of the simplified revision procedure, in accordance with the measures already adopted by the Governing Body;

(c) given the difficulties that have arisen following the total revision of a number of Conventions, the Working Party is invited to consider the possibilities afforded by partial revision methods, in the form of additional protocols, and to propose that these be used more often;

(d) the Working Party could review the denunciation periods to be included in the final provisions of the new Conventions, and consider reducing to five years, instead of ten, the duration of the renewal of the validity of a ratified Convention;

(e) the Working Party could further propose a modification of the period during which a member State can exercise its right of denunciation;

(f) the Working Party is invited to consider the possibility of agrogating standards, especially in the case of Conventions that have not entered into force and those that can objectively be described as outdated, as well as the possibility of abrogating or replacing obsolete Recommendations;

51 As a final possibility, the Governing Body could itself submit a report to the Conference when the need arises for a Convention to be revised. It should be recalled in fact that each Convention contains a standard provision whereby the Governing Body may present to the Conference a report on the working of the Convention and it will examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.
(g) should the Working Party opt for the *extinguishment* of Conventions on a wider scale, it could also propose the adoption of appropriate measures, such as the establishment of the procedures at the national level and within the ILO that have been analysed above, the insertion of a new *final clause* in future Conventions, or the adoption of a *Convention* providing for a final clause in respect of abrogation;

(h) with a view to making the *standard-setting system more consistent*, the Working Party could request the Office to submit proposals to it for *leaving dormant* Conventions that no longer play an active role as an objective of the ILO, or such other proposals as it may deem appropriate in this respect;

(i) the Working Party could make recommendations regarding the *ratification thresholds* for entry into force of new Conventions;

(j) the Working Party is invited to propose the introduction of a *system for assessing standards*, such as by resorting more often to procedures provided under article 19.5(e) of the Constitution of the ILO, and to article 14.1, and to indicate the role that the LILS Committee might play in this respect.

77. *The Working Party is invited to examine the proposals listed in paragraph 76 above, to decide on the action to be taken and to submit its recommendation on the matter to the Committee on Legal Issues and International Labour Standards.*


*Points for decision:* Paragraph 33; Paragraph 77.
### Appendix I

**International labour Conventions**

**List of the most ratified Conventions**

<table>
<thead>
<tr>
<th>Section</th>
<th>Number of ratifications in force on 1 June 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Basic rights</td>
<td></td>
</tr>
<tr>
<td>— Freedom of association</td>
<td></td>
</tr>
<tr>
<td>C.87: Freedom of Association and Protection of the Right to Organize, 1948</td>
<td>113&lt;sup&gt;2&lt;/sup&gt;</td>
</tr>
<tr>
<td>C.98: Right to Organize and Collective Bargaining, 1949</td>
<td>125</td>
</tr>
<tr>
<td>C.11: Right of Association (Agriculture), 1921</td>
<td>117</td>
</tr>
<tr>
<td>— Forced labour</td>
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<tr>
<td>C.29: Forced Labour, 1930</td>
<td>136</td>
</tr>
<tr>
<td>C.105: Abolition of Forced Labour, 1957</td>
<td>113</td>
</tr>
<tr>
<td>— Equality of opportunity and treatment</td>
<td></td>
</tr>
<tr>
<td>C.100: Equal Remuneration, 1951</td>
<td>124</td>
</tr>
<tr>
<td>C.111: Discrimination (Employment and Occupation), 1958</td>
<td>119</td>
</tr>
<tr>
<td>2. Employment policy and human resources development</td>
<td></td>
</tr>
<tr>
<td>3. Labour relations</td>
<td></td>
</tr>
<tr>
<td>4. General conditions of employment</td>
<td></td>
</tr>
<tr>
<td>— Wages</td>
<td></td>
</tr>
<tr>
<td>C.95: Protection of Wages, 1949</td>
<td>90&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td>C.26: Minimum Wage-Fixing Machinery, 1928</td>
<td>99&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td>— Weekly rest</td>
<td></td>
</tr>
<tr>
<td>C.14: Weekly Rest (Industry), 1921</td>
<td>115</td>
</tr>
<tr>
<td>5. Occupational safety, health and welfare</td>
<td></td>
</tr>
<tr>
<td>6. Children and young persons</td>
<td></td>
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<tr>
<td>7. Women</td>
<td></td>
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<tr>
<td>— Underground work</td>
<td></td>
</tr>
<tr>
<td>C.45: Underground Work (Women), 1935</td>
<td>88&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td>8. Older workers</td>
<td></td>
</tr>
<tr>
<td>9. Social security</td>
<td></td>
</tr>
<tr>
<td>— Employment injury and occupational disease benefits</td>
<td></td>
</tr>
<tr>
<td>C.19: Equality of Treatment (Accident Compensation), 1925</td>
<td>116</td>
</tr>
<tr>
<td>10. Migrant workers</td>
<td></td>
</tr>
<tr>
<td>11. Nursing personnel</td>
<td></td>
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<tr>
<td>12. Seafarers</td>
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<tr>
<td>13. Industrial activities at sea</td>
<td></td>
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<tr>
<td>14. Dock workers</td>
<td></td>
</tr>
<tr>
<td>15. Indigenous and tribal peoples and workers in non-metropolitan territories</td>
<td></td>
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<tr>
<td>16. Plantations</td>
<td></td>
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<tr>
<td>17. Labour administration</td>
<td></td>
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<tr>
<td>— Labour inspection</td>
<td></td>
</tr>
<tr>
<td>C.81: Labour Inspection, 1947</td>
<td>115</td>
</tr>
<tr>
<td>18. General social policy (miscellaneous)</td>
<td></td>
</tr>
</tbody>
</table>

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1 Conventions ratified by more than 50 per cent of the 171 member States of the ILO on 1 June 1995.
2 Two member States have denounced this Convention.
3 One member State has denounced this Convention.
4 Eight member States have denounced this Convention.
## Appendix II

### International labour Conventions

#### List of Conventions that have not entered into force, have been left dormant or have received only few ratifications

<table>
<thead>
<tr>
<th>Number of ratifications in force on 1.6.1995</th>
<th>Denunciations ¹</th>
<th>Convention:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stricto sensu</td>
<td>1: not in force</td>
</tr>
<tr>
<td></td>
<td>Revision</td>
<td>2: left dormant</td>
</tr>
</tbody>
</table>

1. Basic rights
   - Freedom of association
     - C.84 Right of Association (Non-Metropolitan Territories), 1947
       Number of ratifications: 4
       Denunciations: 0
       Convention: Not in force
   
2. Employment policy and human resources development
   - Employment services
     - C.34 Fee-Charging Employment Agencies, 1933*
       * closed to ratification, revised by C.96, 1949.
       Number of ratifications: 5
       Denunciations: 0
       Convention: Left dormant
   
3. Labour relations

4. General conditions of employment
   - Hours of work
     - C.20 Night Work (Bakeries), 1925
       Number of ratifications: 11
       Denunciations: 6
       Convention: In force
     - C.31 Hours of Work (Coal Mines), 1931*
       * revised by C.46, 1935.
       Number of ratifications: 2
       Denunciations: 0
       Convention: In force
     - C.43 Sheet-Glass Works, 1934
       Number of ratifications: 12
       Denunciations: 1
       Convention: Not in force
     - C.46 Hours of Work (Coal Mines) (Revised), 1935
       Number of ratifications: 3
       Denunciations: 0
       Convention: In force
     - C.47 40-Hour Week, 1935
       Number of ratifications: 12
       Denunciations: 0
       Convention: In force
     - C.49 Reduction of Hours of Work (Glass-Bottle Works), 1935
       Number of ratifications: 9
       Denunciations: 1
       Convention: Not in force
     - C.51 Reduction of Hours of Work (Public Works), 1936
       Number of ratifications: 0
       Denunciations: 0
       Convention: In force
     - C.61 Reduction of Hours of Hours of Work (Textiles), 1937
       Number of ratifications: 0
       Denunciations: 0
       Convention: In force
     - C.67 Hours of Work and Rest Periods (Road Transport), 1939*
       * revised by C. 153, 1979, and closed to ratification.
       Number of ratifications: 3
       Denunciations: 0
       Convention: In force
     - C.153 Hours of Work and Rest Periods (Road Transport), 1979
       Number of ratifications: 7
       Denunciations: 0
       Convention: In force

¹ Conventions adopted prior to 1985 that had received no more than 20 ratifications by 1 June 1995. All the Conventions adopted since 1985 had been ratified by fewer than 20 countries on 1 June 1995, except for the Labour Statistics Convention, 1985 (No. 160), which had received 37 ratifications.

² There are two types of denunciation. There are denunciations "stricto sensu" when a member State denounces a Convention in order to put an end to the obligations that it had contracted vis à vis that Convention. Denunciations may also be the result of the ratification of a new Convention "revising" the initial Convention, which in most cases is thereby automatically denounced.

For Conventions that have been left dormant, see Governing Body documents GB.229/10/19, GB.231/13/18 and GB.232/9/17.
<table>
<thead>
<tr>
<th>Number of ratifications in force on 1.6.1995</th>
<th>Denunciations</th>
<th>Convention: 1: not in force 2: left dormant</th>
</tr>
</thead>
</table>

5. Occupational safety, health and Welfare

6. Children and young persons

- Minimum age
  - **C.60 Minimum Age (Non-Industrial Employment) (Revised), 1937***
    
  - **C.79 Night Work of Young Persons (Non-Industrial Occupations), 1946**

7. Women

- **C.41 Night Work (Women) (Revised), 1934***
  * revised by C.89, 1948, and closed to ratification.

8. Older workers

9. Social security

- General
  - **C.157 Maintenance of Social Security Rights, 1982**

- Medical care and sickness benefit
  - **C.25 Sickness Insurance (Agriculture), 1927***
    * revised by C.130, 1969.
  
  - **C.130 Medical Care and Sickness Benefits, 1969**

- Invalidity, old-age and survivors' benefits
  - **C.35 Old-Age Insurance (Industry, etc.), 1933***
  
  - **C.36 Old-Age Insurance (Agriculture), 1933***
  
  - **C.37 Invalidity Insurance (Industry, etc.), 1933***
  
  - **C.38 Invalidity Insurance (Agriculture), 1933***
  
  - **C.39 Survivors' Insurance (Industry, etc.), 1933***
  
  - **C.40 Survivors' Insurance (Agriculture), 1933***
    * Conventions Nos. 35 to 40 have been revised by C.128, 1967, and are now closed to ratification.

  - **C.48 Maintenance of Migrants’ Pension Rights, 1935***
    * revised by C.157, 1982, and closed to ratification.

  - **C.128 Invalidity, Old-Age and Survivors' Benefits, 1967**

- Unemployment benefit

- **C.44 Unemployment Provision, 1934***
  * revised by C. 168, 1988, and closed to ratification.
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>C.21 Inspection of Emigrants, 1926</td>
<td>32</td>
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<tr>
<td>C.66 Migrant for Employment, 1939*</td>
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<tr>
<td>C.143 Migrant Workers (Supplementary Provisions), 1975</td>
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</tr>
</tbody>
</table>

11. Nursing personnel

12. Seafarers

- General
  - C.145 Continuity of Employment (Seafarers), 1976 | 17 | - | - | - |

- Conditions for admission to employment
  - C.15 Minimum Age (Trimmers and Stokers), 1921* | 42 | - | 27 | 2 |

- General conditions of employment
  - C.54 Holidays with Pay (Sea), 1936* | 4 | - | 2 | 1 |
  * revised by C.72, 1946, C.91, 1949, and closed to ratification.
  - C.57 Hours of Work and Manning (Sea), 1936* | 4 | - | - | 1 |
  - C.72 Paid Vacations (Seafarers), 1946* | 1 | - | 4 | 1 |
  * revised by C.91, 1949, and closed to ratification.
  - C.76 Wages, Hours of Work and Manning (Sea), 1946* | 1 | - | - | 1 |
  - C.91 Paid Vacations (Seafarers) (Revised), 1949* | 17 | - | 6 | - |
  * revised by C.146, 1976, and closed to ratification.
  - C.93 Wages, Hours of Work and Manning (Sea) (Revised), 1949* | 6 | - | - | 1 |
  * revised by C.109, 1958.
  - C.109 Wages, Hours of Work and Manning (Sea) (Revised), 1958 | 15 | - | - | 1 |
  - C.146 Seafarers’ Annual Leave With Pay, 1976 | 12 | - | - | - |

- Safety and health
  - C.75 Accommodation of Crews, 1946* | 1 | - | 4 | 1 |
  * revised by C.92, 1949, and closed to ratification.

- Social security
  - C.55 Shipowners’ Liability (Sick and Injured Seamen), 1936 | 16 | - | - | - |
<table>
<thead>
<tr>
<th>Convention</th>
<th>C.56 Sickness Insurance (Sea), 1936* * revised by C.165, 1987, and closed to ratification.</th>
<th>17</th>
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<tbody>
<tr>
<td>Convention</td>
<td>C.70 Social Security (Seafarers), 1946* * revised by C.165, 1987, and closed to ratification.</td>
<td>6</td>
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<tr>
<td>Convention</td>
<td>C.71 Seafarers’ Pensions, 1946</td>
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<tr>
<td>Convention</td>
<td>Fishermen</td>
<td>–</td>
<td>–</td>
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<td>Convention</td>
<td>C.112 Minimum Age (Fishermen), 1959* * revised by C.138, 1973.</td>
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<td>Convention</td>
<td>C.125 Fishermen’s Competency Certificates, 1966</td>
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<tr>
<td>13. Industrial activities at sea</td>
<td>14. Dock workers</td>
<td>C.28 Protection Against Accidents (Dockers), 1929* * revised by C.32, 1932, and closed to ratification.</td>
<td>1</td>
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<tr>
<td>14. Dock workers</td>
<td>C.152 Occupational Safety and Health (Dock Work), 1979</td>
<td>18</td>
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<tr>
<td>15. Indigenous and tribal peoples and workers in non-metropolitan territories</td>
<td>C.50 Recruiting of Indigenous Workers, 1936</td>
<td>32</td>
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<tr>
<td>15. Indigenous and tribal peoples and workers in non-metropolitan territories</td>
<td>C.83 Labour Standards (Non-Metropolitan Territories), 1947</td>
<td>2</td>
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<tr>
<td>17. Labour administration</td>
<td>C.85 Labour Inspectorates (Non-Metropolitan Territories), 1947</td>
<td>5</td>
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<td>18. General social policy (miscellaneous)</td>
<td>C.82 Social Policy (Non-Metropolitan Territories), 1947* * revised by C.117, 1962.</td>
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