EIGHTH ITEM ON THE AGENDA

Reports of the Committee on Legal Issues and International Labour Standards

Second report: International labour standards and human rights

1. The Committee on Legal Issues and International Labour Standards met on 21 and 22 March and was chaired by Mr. Ilabaca Orphanopoulos (Government, Chile). The Employer and Worker Vice-Chairmen were Miss Hak and Mr. Parrot respectively.

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

2. A representative of the Director-General indicated that the following amendments should be made to paragraph 72 of the report: 1 in clause (b)(ii), Convention No. 60 did not concern hours of work but the minimum age of employment; in clause (b)(vi), Convention No. 152 should also be added to the list. In the English version only, in clause (b)(ii), the Convention referred to on night work was Convention No. 20.

3. The Employer members stated that the report was an excellent reflection of the discussions that had taken place in the Working Party. As this was the last meeting of the Working Party during the present session of the Governing Body, they hoped the next Governing Body would recommend that the Working Party be re-established. In the past such working parties had usually required a number of years to complete their work, and in this case there were still many issues to be discussed. Issues concerning the content of Conventions and the procedures for denunciation had not been forgotten, although a decision had been made to focus at this time on the revision of standards. The recommendations of the report had been determined by consensus; a good result could only have been achieved in this manner. Within the Working Party there had been a spirit of cooperation and a very positive atmosphere.

1 GB.265/LJLS/5.
4. With regard to the reference in the second sentence of paragraph 2 of the report to a decision “to exclude from revision the six basic ILO Conventions”, the Employer members emphasized that although it had been decided at the November 1995 meeting of the LILS Committee that for the time being these Conventions could be excluded from revision, this did not mean that they should never be subject to revision in the future. They also noted that there was a divergence of views concerning the actual number of basic ILO Conventions, as in some cases it was stated that there were six, and in others that there were seven. They attributed this to the fact that discussions had been taking place on this issue in a number of different committees. The report reflected very adequately the discussions of the Working Party, and they agreed with all the recommendations in it.

5. The Worker members endorsed all the recommendations contained in the report. They emphasized that the recommendations had been adopted by consensus, and that it was essential to continue in this manner. The successful result was also due to the case-by-case examination on the basis of documents that were of good quality and full of useful information; this approach should also continue. It was crucial that when a Convention was shelved there should also be an effort to promote the ratification of the Convention revising it and of other relevant Conventions. The Worker members looked forward to the paper to be prepared by the Office for the November session of the Governing Body on abrogation and the necessary guarantees it would contain concerning the proposal for a constitutional amendment to deal with the abrogation of Conventions. It should be recalled that although questions concerning abrogation and revision of standards were important, they were only one element of standard-setting policy. They should therefore be addressed in the broader perspective of strengthening the standard-setting system, which included progress in strengthening the supervisory system, the preparation of new standards and a heightened effort to promote them — not only the basic human rights Conventions, but also the revising Conventions. They hoped that at the next session they would be in a position to ascertain progress in these other areas as well, and that they would be informed in this respect.

6. The Chairman of the Working Party congratulated the Office on the exceptional quality of the working papers, which had to a great extent accounted for the success of the Working Party. These documents contained not only a legal and historical analysis of the question of abrogation, but also a detailed analysis of 41 Conventions. The Working Party itself should also be congratulated for the calmness and constructive spirit that was characteristic of its work. It had proved to be responsible, reflective and determined to move forward. It was therefore appropriate that its recommendations should be adopted and to hope that the Governing Body would authorize the Working Party to continue its work after this encouraging first stage while bearing in mind the maxim of Montesquieu that useless laws hindered necessary laws.

7. The representative of the Government of Italy agreed with the proposals contained in the report and acknowledged that the constitutional solution was the

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2 GB.264/LILS/4.
clearest and the most final. However, he shared the concerns expressed by the Employer and Worker members that prudence needed to be exercised and the necessary guarantees and safeguards specified. He raised the question as to how far the Organization could go if an abrogating power was given to it. The Conference could not be given any power to abrogate a Convention that member States had ratified in accordance with their constitutional processes except in so far as the parties' obligations vis-à-vis the Organization were concerned. He trusted that the text of an amendment to be proposed by the Office would take into account the above points.

8. The representative of the Government of Germany noted that the question of standard setting and the revision of standards was highly political in nature, and that it was apparent from past discussions of the Governing Body and the Conference that they involved many ideological elements. In view of this, he was all the more impressed by the report, which showed that a pragmatic approach would eventually prevail. This was a good result and a positive indication for the future. He expressed appreciation to the Chairman, the Employer and Worker Vice-Chairmen and the members of the Working Party for their work, and thanked the Office for their documents.

9. He also stated that the Working Party had achieved total consensus on the proposal to adopt a constitutional amendment to deal with the abrogation of Conventions, but recognized that such a solution would need time to materialize.

10. With regard to the recommendations in paragraph 72 of the report, he considered that Convention No. 157 was totally "unratifiable" and should have been included on the list of those Conventions to be abrogated as soon as possible rather than on a list of those whose ratification should be promoted. For almost the same reasons, he did not consider that Convention No. 143 should have been included in paragraph 72((b)(vii) and (viii). He endorsed the recommendation in paragraph 73 that the Working Party be re-established so that it could continue its good work.

11. The representative of the Government of the Russian Federation requested a correction to paragraph 11 of the report. On the question of the majority required, his position was that decisions relating to both the adoption and abrogation of Conventions should be taken by the same two-thirds majority as was provided for in the Constitution. Line 10 of the paragraph should therefore read as follows: "... then that of the Conference with a two-thirds majority ...".

12. The representative of the Government of Norway also requested a correction to his statement: the last sentence of paragraph 8 should be deleted.

13. The representative of the Government of Spain supported the point for decision in paragraph 16 of the report but considered it was necessary to comment on the arguments put forward by the Employer and Worker members concerning delegates attending the Conference. He considered that these delegates were given full powers by their governments to carry out the functions entrusted to them and that the recommendations made by them, which were approved by the Conference, should not be called into question. It was also important to note that decisions taken by parliaments were not a reflection of their decisions alone but that public opinion played an important role. He could not agree to make parliamentary approval a mandatory safeguard. There was a need for flexibility
and to adapt to reality. He emphasized that the adoption and abrogation of Conventions should be subject to the same majority.

14. He suggested that paragraph 72(b)(i) of the report read “the proposal that there should be consideration, with immediate effect, of the impossibility of application and the inexistence of effect and obligation of Conventions that had not entered into force”. The representative of the United Kingdom Government congratulated the Office on the quality of the documents provided. She also congratulated the members of the Working Group on their excellent work, and fully supported all the recommendations in the report.

15. The representative of the Government of Panama congratulated the Office on its in-depth and detailed descriptive documents, and the Working Party for having attained such successful results. It was appropriate to set aside and to examine the possibility of abrogating certain instruments, as this would be beneficial to the ILO's image. He strongly supported the recommendation that the Working Party continue its work.

16. The representative of the Government of Chile requested a rewording of his statement in paragraph 10 of the report to reflect his view that new factors such as globalization and new technologies had transformed today's world, including labour relations, making it necessary to adapt adopted standards to new realities.

17. The representative of the Government of India expressed appreciation for the critical, dispassionate and analytical approach of the Working Party, and for the manner in which each Convention had been examined with respect to obsolescence or relevance. He favoured the continuation of the Working Party, as in his view revision and review would always lead to an improvement in the quality of Conventions and Recommendations.

18. The representative of the Government of the Netherlands congratulated the Office on the excellent quality of its documents. She fully endorsed the report, but noted that she would not have objected to the shelving of Convention No. 44.

19. The representative of the Government of Mexico, referring to paragraph 27 of the report, indicated that his statement should be regarded as concurring with that made by the representative of the Government of Australia (paragraph 25). Denunciation was too closely linked to ratification, and this could discourage the denunciation of Conventions. It should be recalled that member States reported on possible ratification when Conventions were submitted to the competent authorities, and the arguments in favour of ratification were evaluated at this time.

20. The representative of the Government of Australia endorsed the recommendations in the report, but requested that paragraph 58 be amended so that the phrase “He would prefer to consult with his Government” be deleted and replaced by “There was a need for further consultation”.

21. The representative of the Government of Brazil was greatly interested in the work of the Working Party, and expressed satisfaction with the recommendations that were made. A very important step had been taken with respect to standard-setting matters.
22. The representative of the Government of Spain congratulated the Working Party and its Chairman. He raised the possibility that there might be the same Chairman when the Working Party was re-established following the election of a new Governing Body.

23. The Chairman of the Committee emphasized the consensus and unanimity achieved by the Working Party, as well as the need for the Working Party to be re-established with the same Chairman. He also expressed appreciation to the Office for the excellent working papers.

24. The Committee recommends that the Governing Body take note of the discussion, and approve the recommendations in paragraphs 16, 72 and 73 of the report of the Working Party on Policy regarding the Revision of Standards which the Committee had adopted, namely —

(a) to take note of the part of the report of the Working Party on Policy regarding the Revision of Standards concerning abrogation/termination of international labour Conventions;

(b) to request the Office to prepare, for the next meeting of the Working Party, a detailed document that should address the procedural aspects, the necessary safeguards and the various problems related to a constitutional amendment on the abrogation or termination of obsolete international labour Conventions; on the basis of this document, the Working Party could continue its work;

(c) to take note of the part of the report of the Working Party on Policy regarding the Revision of Standards concerning the examination of the least ratified and dormant Conventions;

(d) to approve the proposals on which the Working Party and the Committee reached a consensus, namely —

(i) the proposal that Conventions that have not entered into force, and which are listed in paragraph 23 of the report of the Working Party (Conventions Nos. 31, 46, 51, 61 and 66) be shelved with immediate effect;

(ii) the proposal to shelve the following Conventions with immediate effect:

- Night Work (Bakeries) (Convention No. 20);
- Migrant Workers (Convention No. 21);
- Dockers (Convention No. 28);
- Employment Services (Convention No. 34);
- Social Security (Conventions Nos. 35, 36, 37, 38, 39 40 and 48);
- Hours of Work (Conventions Nos. 43, 49 and 67);
- Minimum Age (Convention No. 60);
- Indigenous Workers and Aboriginal Populations (Conventions Nos. 50, 64, 65, 86 and 104);

3 GB.265/LILS/5, appended to this report.
In addition, the Committee recommends that the Governing Body invite the States concerned to contemplate ratifying the more recent and updated Conventions listed in the relevant paragraphs of the report of the Working Party, and denouncing the Conventions listed above at the same time. On this point, the Committee draws the attention of the Governing Body to the close link between the proposals relating to the ratification of the more recent and updated Conventions and those relating to the possible denunciation of certain obsolete instruments;

(iii) the possible subsequent abrogation by the Conference of five Conventions that have not entered into force (Conventions Nos. 31, 46, 51, 61 and 66), and of three other Conventions (Nos. 28, 60 and 67) once an appropriate procedure has been adopted;

(iv) the maintenance of the status quo with respect to Convention No. 47, pending the adoption of revised standards on hours of work and working-time arrangements (paragraph 60 of the report of the Working Party);

(v) the revision of the provisions of Convention No. 79, and possibly of other instruments on the night work of young persons (paragraph 66 of the report of the Working Party);

(vi) the recommendation that the Governing Body invite member States to contemplate ratifying Conventions Nos. 110, 128, 130, 152, 153 and 157 and informing the Office of the obstacles and difficulties encountered, if any, as well as of the possible need to revise these instruments;

(vii) bearing in mind the proposals contained in this report, the postponement of the examination of Conventions Nos. 25, 41, 44, 82, 83, 84, 85 and 143 to the next meeting of the Working Party, and the submission of a new document that takes into account any additional information and other new facts that the Office may have obtained;

(viii) the preparation by the Office for the next meeting of the Working Party of a document examining the Conventions dealing with the following subjects:

   — Migrant Workers (Nos. 97 and 143);
   — Night Work of Women (Nos. 4 and 89);
   — Night Work of Young Persons (Nos. 6, 79 and 90);

the document should also comprise an examination of the other Conventions that have been the subject of pure denunciations (Nos. 1, 2, 26, 30, 45, 88, 94, 95, 96, 99, 101 and 103);

(e) to note that the implementation of some of the Committee’s recommendations means that the Office must follow up on them by requesting information from governments and constituents and present reports to subsequent meetings of the Working Party on developments in the situation of the Conventions examined and on the results obtained; and that the member States must undertake tripartite
consultations that take into account, in particular, the procedures laid down in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152);

(f) to decide that, after the elections to the Governing Body in June 1996, it should reconstitute the Working Party on Policy regarding the Revision of Standards so as to enable it to meet in November 1996 to continue its work.

Standard-setting policy: Ratification and promotion of fundamental ILO Conventions

25. The Committee had before it a paper \(^4\) on this item following its discussions at the Governing Body's 264th Session (November 1995).

26. A representative of the Director-General updated the information provided in the document. Since the completion of the document on 9 February 1996, Estonia had ratified Conventions Nos. 29 and 105, and South Africa had ratified Conventions Nos. 87 and 98. The ratification of Conventions Nos. 87 and 98 had been approved by Mozambique, and the Office was awaiting receipt of the formal ratification document shortly. Togo had proposed ratification of Convention No. 105 to its National Assembly. The following additional six countries had sent replies containing information on their intentions with respect to Conventions they had not yet ratified, bringing the total of replies mentioned in paragraph 4 of the document to 102: Dominican Republic (Convention No. 138 is being discussed with the social partners and it is hoped that ratification will be possible at a future date); Kazakhstan (ratification of Conventions Nos. 29, 87, 98, 105 and 111 will be before Parliament during 1996; while Convention No. 100 is covered by the national legislation, no indication is given concerning its ratification); Korea (ratification has been initiated for Conventions Nos. 29, 105, 111 and 138, but Conventions Nos. 87 and 98 would require revision of the labour laws); Mauritius (ratification of Convention No. 87 may proceed if the current possibility of challenging the constitutionality of laws would meet the requirements of the instrument; Convention No. 100 will be considered in the formulation of the new labour code; and Convention No. 111 faces the obstacle of the lack of a national authority to monitor non-discrimination policy; this could be a situation for technical assistance from the Office); Qatar (the six non-ratified instruments, Conventions Nos. 29, 105, 100, 87 and 98, are now being studied); the United States (ratification of Convention No. 111 may be possible, but the timing and the outcome of the ratification procedure cannot be predicted; Convention No. 29 faces the obstacle of the current trend towards privatizing prisons; the review of Convention No. 138 has been suspended); Kuwait (Convention No. 138 is being examined in more detail with a view to ratification). In addition, referring to the information from Chile in paragraph 13 of the document, he reported that a government official had benefited from a visit

\(^4\) GB.265/LILS/6.
to the Standards Department last month with a view to gathering information for ratification prospects; this was a good example of cooperation. Lastly, he added that all regional directors had reacted to the Director-General's memorandum of 20 February 1996, referred to in paragraph 58, and new information was starting to come in.

27. The Employer members were very pleased with the results of the Director-General's initiative; the response rate of almost two-thirds was very high. As for the various arguments put forward by governments for not ratifying, it was for the governments themselves to convince their own parliaments of their positions. The example of technical assistance to Chile was a good one for other governments to follow. They had noted with interest the reasons for non-ratification put forward by the United States, especially as concerned Convention No. 87. Regarding the concluding remarks made in the document, they noted that further ratifications were expected, and the additional information just supplied pointed to others due in 1996 or early 1997. They were also pleased with the reaction to the Director-General's memorandum of 20 February 1996 to the ILO's regional directors, and trusted that the MDTs would be involved in such follow-up. Noting that the next report was due for March 1997, they stressed that this innovative approach of making a "personal plea" for ratification appeared to have good results. This should be kept in mind when the Committee discussed other methods of strengthening the supervisory system.

28. The Worker members welcomed the document and the additional information, which all showed that ratifications were on the rise. The document contained valuable information for workers' organizations. As had already been stated during the November 1995 discussion on this subject, they fully endorsed the Director-General's initiative which should lead to a real campaign for universal ratification of the Conventions concerned. Technical assistance should be used to help governments when obstacles were identified. While there were grounds for satisfaction, the Office should go further in its promotional activities. Acknowledgement of the high rate of replies should not, however, lead to excessive optimism, as a number of governments had still not replied. The ILO should certainly respond positively to the requests for technical assistance outlined in paragraphs 47 to 54, but should also take a pro-active approach in other cases as appropriate. They nevertheless were satisfied with the paper and looked forward to the next annual report.

29. The representative of the Government of France found the document very encouraging, especially in view of the further information supplied. Paragraph 55, referring to a move towards universal ratification, might be too optimistic. While that had not yet been achieved, this exercise had given fresh impetus to it. He stressed that there was a need to continue contacts with governments, for example, at the forthcoming session of the International Labour Conference, especially those which were close to ratifying. He also stressed the importance of this initiative given that ratification was at the basis of the standard-setting activities.

30. The representative of the Government of Germany appreciated the highly informative document and the additional information provided. He queried the
reference in the Appendix to El Salvador’s prospects for ratifying Convention No. 138, a ratification which he believed had now taken place.

31. The representative of the Government of Chile expressed his gratitude to the Director of the International Labour Standards Department and the staff for their technical competence and the time spent with the Chilean expert in February 1996 during his review of possible ratifications. This encouraging exercise had already led to tripartite discussion in Chile on ratification of Convention No. 144, and he hoped that two other Conventions would be submitted to Parliament for ratification at its current session. A high-level academic seminar was also to be held to convey to the social partners the importance of the ILO and its standards.

32. The representative of the Government of India complimented the Director-General and the Office on according primacy to these seven Conventions, and on conveying how serious they were with regard to their ratification and application by all member States. These instruments were basic to human dignity and were based on the Declaration of Philadelphia. He stressed that ratification and application were evolutionary processes, like human development. As each country had its own style and needs, so each responded in its own way with its own political and cultural peculiarities. Non-ratification should not be construed as reflecting a lack of political will or as an indication of the level of development, for ratification was but one mechanism for ensuring minimum labour standards. He queried the grouping of certain Conventions in the document’s analysis: Conventions Nos. 87 and 98 addressed collectivities and groups, whereas Conventions Nos. 29, 100, 105 and 111 addressed individuals. While some States might have the political will and commitment, there may be valid reasons for non-ratification. India, for example, had ratified Convention No. 29 in 1954, but had taken 22 years before it was able to translate the principle of that Convention into legislation outlawing bonded labour, and even now bonded labour had not disappeared. A similar situation had occurred with Convention No. 100, ratified in 1958, but translated into legislation only in 1976, and equal pay was still an elusive and formidable problem. These examples demonstrated the evolutionary process inherent in these instruments. In addition, a Convention might not be ratified for technical reasons, although substantially applied in the national law and practice.

33. The representative of the Government of the United Kingdom was pleased with the helpful, informative and up-to-date document. As regards the question of what assistance was needed in promoting the core Conventions, paragraph 56 underlined the substantial problems. The focus should now be on removal of these obstacles through technical assistance to governments. The paper showed that many countries supported the principles contained in the instruments, but did not ratify them for technical reasons. There should therefore be a shift from promoting formal ratification to promoting the key principles contained in the instruments.

34. The representative of the Government of Norway stressed his Government’s support for the Director-General’s actions, but wished that the results were even better. The update just given was slightly more positive, but the Conventions were still far from universal ratification. The exercise demonstrated, however, that governments took the matter seriously and were moving in the right
direction. As over 50 States had not yet replied, his Government supported the follow-up efforts to encourage replies. The most positive aspect in his view was that, in at least 35 countries, the ratification of Convention No. 138 was in process. As this was a useful exercise — which also did not cost much — he looked forward to regular updates.

35. The representative of the Government of Panama pointed out that the ratification of fundamental Conventions was insisted on in the central American region, and that almost all countries in the region had ratified these instruments. He informed the Committee that at a meeting of central American ministers of labour, held recently in Nicaragua, the participants had congratulated Guatemala on the negotiations for peace and its recent decision to ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169). As this was a country that had suffered many problems, he urged other governments to do the same.

36. The representative of the Government of the United States stated that the paper and the update showed that a simple letter from the Director-General could inspire a major reaction. The ILO was addressing this issue of fundamental Conventions in many bodies (LILS; ESP in its discussion of country objectives; the Governing Body’s Working Party on the Social Dimensions of the Liberalization of International Trade; and the LILS Working Party on Policy regarding the Revision of Standards) and had to be sure that all were working towards the same goal. In reporting, these bodies had to ensure that the greatest amount of information was gathered and shared, while at the same time limiting the number of different reports. His Government looked forward to receiving this type of document on a regular basis.

37. Mr. Ahmed (Worker member) noted that the standards in question constituted very important rights not only for workers in the North, but also for those in the South. He looked forward to ratification by those countries that had not done so, and stressed that they were obliged to implement the principles laid down in them. The MDTs should provide technical assistance to overcome the obstacles listed in paragraph 56. Regarding the differentiation made by an earlier speaker between individual and collective rights, the Worker members believed that the individual was the basis of all rights: if individuals were denied their rights, then the collectivity was denied them as well. Convention No. 98 concerned the protection of individuals against acts of anti-union discrimination. He called on the Governments listed in paragraph 57 to send replies.

38. The representative of the Government of the Netherlands endorsed the decision that the document be presented on a regular basis. If such a campaign had been introduced previously, the Netherlands might have ratified Convention No. 98 earlier than two years previously.

39. The representative of the Government of Italy paid tribute to the document and hoped that further progress in ratifications would be reported in the regular updates. While the replies received from governments were generally positive, some left little room for hope. He hoped that the countries listed in paragraph 57 would reply. The technical assistance of the Office should assist those governments which might not be aware of the various types of assistance that were available. He strongly supported the Director-General’s memorandum of 20 February 1996.
40. Mr. Gray (Worker member) pointed out that the comment in paragraph 18 on freedom of association in his country needed clarification and ought to be changed. In at least two cases (air traffic controllers and strike replacements), the Committee on Freedom of Association had not found that there was total compliance. Mr. Katz (Employer member) challenged this request for a change, since the decision in the strike replacements case had not been of a condemning nature. The representative of the United States Government, noting this example of tripartite discussion, undertook to make a clearer reply with which both previous speakers could agree.

41. The representative of the Government of Spain thanked the Director-General for his initiative and the International Labour Standards Department on an excellent document. He supported previous speakers who had called for follow-up, and pointed out that there were many different forms of assistance to governments, such as direct contacts missions and other informal channels.

42. The Worker members, in reply to some of the previous speakers, stressed that one should never lose sight of the fact that these were fundamental standards. If governments stated their willingness to accept the principles they contained, that was a good thing, but not enough: they should go ahead and ratify them. Ratification of only part of the principles set out in these instruments was not possible, and governments should avoid trying to make apologies for not having ratified these fundamental Conventions. They also noted that some replies referred to obstacles to ratification resulting from the administrative burden of supplying reports. This was not convincing as an explanation of failure to ratify, especially when forwarded by countries that had considerable resources but ratified few Conventions. Some replies showed that greater efforts were needed. On the question of ratification progress in central America, they pointed out that basic Conventions were still being violated there in the gravest manner. It should not be overlooked that the purpose of this exercise was not only for ratification, but also for full application of the fundamental instruments.

43. The Employer members agreed that ratification was not an end in itself; after ratification, implementation had to be examined. It was true that the paper presented a good list of progress, but experience in the Committee on Freedom of Association showed that violations continued. One of the speakers had suggested that perhaps only part of the principles of a fundamental Convention could be ratified, but this was not possible legally. Moreover, a decision had already been taken at the Governing Body’s November 1995 session as part of the present exercise that these core Conventions were not open to revision, so any idea in that direction could go no further.

44. The Chairman summarized the debate, pointing out that letters and assistance from the Office, including the MDTs, were not enough, and that governments also needed to take action. In his region, the Regional Office was able to assist governments which had not yet replied to do so. The paper to be submitted on this subject in March 1997 would provide additional information.

45. The Committee took note of the Office paper.
Standard-setting policy: The strengthening of ILO supervisory procedures

46. In accordance with the decision taken by the Governing Body at its 264th Session, the Committee had before it a paper on this subject.

47. The Employer members stated that paragraph 7 of the document, in which it was suggested that the Governing Body could discuss comments from workers’ and employers’ organizations received under article 19 of the Constitution, would duplicate other mechanisms and should not be accepted. The Committee of Experts and the Conference Committee included legal experts, but the Governing Body did not. They agreed with the proposal for increased use of article 23(2) of the Constitution to encourage employers’ and workers’ organizations to make comments on governments’ reports.

48. They did not agree with Part II of the document on further possibilities for strengthening the supervisory procedures. The Governing Body had not been favourable to the adoption of new supervisory mechanisms when the subject was discussed at the previous session, and the Employer members in particular had stated that they could not accept this proposal. Much had already been done to strengthen the supervisory procedures, and under the previous item the Committee had discussed the value of direct approaches to member States. Complaint mechanisms under articles 24 and 26 of the Constitution were already available for ratified Conventions, but if the possibility of filing complaints on unratified Conventions were adopted, this would have a retroactive effect as States had not known when they joined the Organization that this possibility might exist; it might even have prevented some of them from joining. This proposal could not be compared to the Committee on Freedom of Association procedure, since the Conventions concerned in the present proposals dealt with individual rights, while Conventions Nos. 87 and 98 dealt with the rights of organizations. The Employer members also did not like the possibility raised in paragraph 13 of complaints being receivable without the government’s consent if they referred to ratified Conventions, and with its consent if they referred to unratified Conventions, as this would create two categories of States. Paragraph 17 made an interesting argument on whether the language of the Constitution or the language of the Conventions should be used, but they were not sure what was meant.

49. As concerned paragraphs 21 and following, concerning the revival of the procedure for special surveys on discrimination, the reason for not accepting the proposal was contained in the document, as it had remained 23 years without being used successfully. The same problem of consent was present here, and of course the procedure should not be extended to other subjects. They asked whether the term “forced child labour” in paragraph 25 meant that there was some distinction on the basis of age. The recommendation in paragraph 30, to amend the procedure to refer to the present Committee instead of the defunct Committee on Discrimination, would have to be accepted if the recommendation concerning the procedure was accepted. The proposal in paragraph 35 to extend the scope of the procedure to other grounds of discrimination not covered in

5 GB.265/LILS/7.
Convention No. 111 would implicitly extend the scope of that Convention without amending it, and this was as unacceptable as the proposal made earlier to ratify parts of Conventions. The Employer members therefore could not accept any of the proposals made.

50. The Worker members found the paper very disappointing. The Governing Body had discussed the question at its previous session, and for lack of time to achieve a consensus, had referred it to the present Committee. The original proposal should have been discussed without adding other proposals to it, as this had complicated the question. The wider use of article 19 of the Constitution had already been discussed at the previous session, and they did not see the point of returning to it in paragraphs 7 and 8 of the present document. They agreed with paragraph 9 concerning increased use of article 23(2) of the Constitution. They did not agree with paragraph 10 concerning the presentation of the report of the Committee of Experts, which had not attracted majority support in the previous discussion.

51. The Worker members supported the adoption of a new procedure modelled on that of the Committee on Freedom of Association, which would not depend on the ratification of the Conventions or the consent of the government concerned. The document should have developed the arguments made in the previous paper with a view to facilitating discussion of all relevant questions. In spite of the points made in paragraphs 14 and 15 on the advantages of a procedure which would rely on government consent if the Conventions were not ratified, they did not support this option, which past experience had shown was likely to be of no significant value. The two new suggestions made, to revive and extend the special procedure on discrimination, had not been requested in the previous discussion; they did not support them because there was no reason to believe they would work now if they had not worked before. They therefore restated their earlier position, and asked for a new document developing the original proposal. They noted the Employer members’ points, especially that concerning retroactivity, and hoped that an expanded version of the previous document would address this.

52. The representative of the Government of the Netherlands recalled that the OECD was also assessing the ILO’s supervisory mechanism. The proposal for a new mechanism was a very good one, as his delegation had said in the November 1995 discussion, and he felt that it had been dismissed too quickly in favour of new proposals. Paragraph 21 illustrated the fact that, if consent were required, there would be no procedure. Some countries might feel that a procedure which would not require consent if a Convention had not been ratified would infringe on sovereignty, but this should not be overemphasized. On the basis of the statement by the Worker members, the ILO should differentiate between management and entrepreneurship; the OECD did not think the old way of supervision was good enough, and perhaps an attempt should be made to create something more imaginative and not simply to preserve what existed.

53. The representative of the Government of Spain stated that the comments made so far on the document were too severe. The proposals were imaginative, but the legal issues had to be examined rigorously first. The procedure of the Committee on Freedom of Association was said to be the best model, but a
distinction had to be made between individual and collective rights. That procedure had been created for exceptional reasons, and it was the only one that applied to unratified Conventions.

54. The question arose of whether the Constitution could be applied directly. All member States were required to comply with both the letter and the spirit of the Constitution, and if it were to make sense it had to be observed. It had been said that Conventions were international collective bargaining agreements, but this was not correct — they were treaties. If States which had not ratified them received the same treatment as those which had, this would not be in conformity with their nature, and ratification would no longer have any legal meaning. Therefore, the procedure of the Committee on Freedom of Association could not be extended to other Conventions. The proposed new procedure would not allow for anything much beyond the complaints procedures provided under articles 24 and 26 of the Constitution, and the Constitution could not be reinterpreted without modifying it.

55. As regards the proposal to revive the special survey on discrimination, there had been imaginative solutions in the past, such as the studies of the trade union situation in Spain carried out by the Office. Special surveys could therefore make a contribution to advancing national and international labour law, but they should not be applied to countries which had not ratified Conventions, without their consent.

56. Nor was it possible, however, to take no further measures to promote the application of the fundamental Conventions, and imaginative solutions were required. The Governing Body should not rely only on the Office to propose such measures, but should also consider the question itself, based on sound legal analysis. He supported cooperative approaches, not necessarily on the basis of complaints, but based on comments by employers' and workers' organizations. It would therefore be a good idea to study the formula of the special surveys on discrimination instead of creating an ad hoc committee to handle article 24 and 26 complaints. The procedure would have to be amended as regards the reference to the former Committee on Discrimination.

57. The representative of the Government of the Russian Federation asked what was the constitutional basis for the proposal to create a new procedure. There were already provisions for complaints on ratified Conventions, and article 22 of the Constitution provided for regular reporting on ratified Conventions, and all this was sufficient for ratified Conventions. For unratified Conventions, there was no additional obligation except periodic reports under article 19 of the Constitution. The Office's proposal therefore had no constitutional basis, and whatever solution was adopted could not have obligatory force for governments, and his delegation did not support paragraph 20.

58. The representative of the Government of Germany agreed that the report was not as bad as some had said, and in fact it was quite good. It put four questions in its point for decision, and he could reply with a clear "no" to them all. The essential question was whether the Committee on Freedom of Association procedure could be extended to other Conventions, and the answer was that it could not. The main reason was that of state sovereignty. The exception made for
the Conventions on freedom of association should be the only exception to the
general rule, for if more Conventions were made obligatory without ratification
this would mean that they would not be ratified. Some might ask why his
Government cared about this, since it had ratified all the Conventions concerned,
and the answer was that the Government was not masochistic and that the
requirement to respond to the Committee of Experts, the Conference Committee
and the Committee on Freedom of Association was already sufficient. The
establishment of more committees to deal with forced labour and discrimination
would stimulate complaints.

59. He had no difficulty with the proposal in paragraph 14 to create a
standing committee to handle article 24 and 26 complaints, and felt that this
would be a good idea to replace ad hoc committees. The consistent conclusions
and jurisprudence of such a committee might give its deliberations greater weight.
Nor did he disagree that such a committee should be allowed to examine
complaints against governments who agreed to its doing so, but felt that this
would require an amendment to the Constitution. He rejected the proposal to
revive the special procedure on discrimination. Paragraph 3 of that procedure
allowed requests for surveys to be filed concerning Convention No. 111 and the
standards on migrant workers, but this had been adopted before the adoption of
Convention No. 143, which was a very poor instrument. The procedure should
not be extended to other instruments.

60. The representative of the Government of Norway recalled that the
promotion of the basic rights of workers was the Organization's highest priority.
In the discussion in November 1995 he had expressed concern over the legal basis
for complaints against non-ratifying States, which was not examined in the paper
before the Committee. He did not support the proposals for different options
requiring government consent because, as shown by the 1973 special procedure
on discrimination, consent would not be obtained. He shared the disappointment
of the Worker members, and hoped that a new paper at the Committee's meeting
in November would examine how to supervise the situation in countries that had
not ratified human rights Conventions, with emphasis on the legal basis for the
proposal, leaving aside a requirement for consent of the countries concerned.

61. The representative of the Government of the United Kingdom thanked
the Office for the paper, which contained many interesting ideas. The goal of the
discussion was to strengthen the supervisory system for the priority objectives of
democracy and human rights. The time was not ripe for the proposals made in the
paper, and in a time of budget restrictions proposals should be made to improve
existing procedures rather than to institute new ones. A new paper should consist
of a comprehensive analysis of how effective the present procedures were, how
to improve them, and other ways of improving the standards system, including
the continuation of revision and examining the workings of the Conference
Committee.

62. The representative of the Government of India found it difficult to
endorse the wide range of proposals, particularly those contained in paragraphs
14 (establishment of a new committee), 20 (draft standing orders for a new
procedure), 24 (revival of the procedure for special studies on discrimination), 25
(extension of that procedure) and 30 (amendment of the legal provisions
concerning the procedure). There should be no extension of the Committee on Freedom of Association, but rather qualitative improvements in the supervisory procedure. The proposals did not follow the basic principle of voluntarism, which was the cornerstone and strength of the system. The ILO should take greater account of national circumstances. The proposals would alter the mandate and character of the ILO, and it would not be constitutional to impose compulsory supervision in the absence of ratification, especially at a time when the Office’s capacity to provide assistance was diminishing because of budget restrictions. The examination should be continued on the basis of revised proposals containing practical solutions which would help developing countries without placing additional legal and administrative burdens on them.

63. The representative of the Government of France agreed with the proposals in Part I of the paper (measures to strengthen the existing supervisory procedures), while expressing scepticism on the revival and extension of the procedure for special studies on discrimination. As concerned the proposal concerning a new complaints procedure, it had been mentioned that the OECD felt that the procedure of the Committee on Freedom of Association was the most effective ILO procedure and should be expanded. However, he had participated in the discussions at the OECD, which had had great difficulty understanding the complexity of the ILO’s procedures for supervision except for the rather simple procedure of the Committee on Freedom of Association. He had reservations about extending that procedure, as it was based on the tripartite nature of the ILO and on constitutional provisions, which the proposals before the Committee were not.

64. The representative of the Government of Indonesia stated, on behalf of the Asian and Pacific Governments, that the standards activities of the ILO were very important, but that the group opposed any decision to make supervision obligatory, regardless of the situation of countries and of whether they had ratified the Conventions concerned. The supervisory procedures could be strengthened, but not in this way. They were concerned about links between basic human rights standards and other issues. In some cases standards had been interpreted by the supervisory bodies in ways that went beyond the provisions of the Conventions concerned. Article 19(3) of the Constitution provided that the ILO should recognize the stages of development of different States, and it was also necessary that account be taken of cost factors. These proposals raised controversial issues, and new compulsory measures were not appropriate. There should be more attention to updating standards and to making them more flexible.

65. The representative of the Government of China stated that worldwide economic integration had a great influence on labour, tripartism and industrial relations. The ILO should come to grips with this through in-depth studies, bearing in mind the conclusions of the World Summit for Social Development that its priority objectives should be to promote employment and end poverty. Promoting international labour standards was a means, not an end in itself, and the ILO should promote coordinated social and economic development for social justice. The proposal to revive the procedure on discrimination was neither convincing nor necessary, as it had not been used successfully since 1973. The scope of this procedure should not be extended to other Conventions. The ILO
should ask why it did not work, instead of blaming the failure on the lack of government consent. As regards consent, the use of the complaints procedures should serve to improve implementation, and without the consent and cooperation of governments there would be no improvements in law or in practice. It was thus both impractical and unthinkable to make Conventions more widely applicable without consent.

66. The representative of the Government of Italy stated that the document before the Committee was a good attempt to enlarge the spectrum of supervisory mechanisms, a very difficult question. Part I of the document reflected existing practice. As regards Part II, the proposal concerning the procedure for special studies on discrimination should not be accepted in view of the failure of this procedure to gain governments' consent. As regards the proposal for a new committee, he had no objection to creating a standing committee to deal with article 24 representations and article 26 complaints, and the proposal in paragraph 14 should therefore be studied further. However, the proposal to create a new complaints mechanism raised serious doubts as to its legality and effectiveness, and paragraph 20 therefore could not be approved. There should be a new document before the next session dealing only with the establishment of a standing committee on article 24 and 26 complaints.

67. The representative of the Government of Argentina recalled that, under the previous item on the agenda, the Committee had noted with satisfaction the increase in the ratification of fundamental Conventions. It was not enough, however, to establish universal legal obligations without establishing machinery to ensure respect for them throughout the world. As the Worker members had said, the procedure of the Committee on Freedom of Association was the ideal way of doing this. The proposals in the document were entirely valid.

68. The representative of the Government of Australia, referring to paragraph 7, stated that as workers' and employers' organizations' comments were examined by the Committee of Experts and the Conference Committee, there was no need for the Governing Body to examine them. He agreed that the Committee of Experts should raise these points under Convention No. 144, and that the Committee of Experts should be asked to expand the section of its report on human rights in relation to the application of human rights Conventions. As regards Part II of the document, it was clear that if any new procedures were created they would have to be non-compulsory. This was consistent with the ILO's way of persuasion and was the most likely to succeed. It was also evident that they would have to be based on the Conventions on the subjects concerned, which would yield more certainty on the obligations concerned.

69. The representative of the Government of Canada restated her delegation's support for strengthening and simplifying the ILO's procedures, especially in relation to fundamental human rights. She shared the reservations of other speakers on the proposals made in the document, as they would make the procedures heavier instead of lighter. She supported continuing efforts in this area that did not rely only on legal measures, but which explored the relationship between standards and technical cooperation, lending assistance to eliminate obstacles to the ratification and implementation of standards.
70. The representative of the Government of Japan expressed support for the statement by the representative of the Government of Indonesia on behalf of the governments of the region. Supervisory procedures should distinguish clearly between ratified and unratified Conventions. The aim of the supervisory procedures was to implement ratified Conventions in full, and to point out how they were not applied and suggest how this could be improved. There was no obligation to implement Conventions which had not been ratified. They therefore supported increasing the number of ratifications, as indicated under the previous item. The exception made for the freedom of association Conventions was based on the ILO’s tripartite structure, but to extend this to other Conventions would raise too many legal questions and they could not support it. The changes in the world had to be taken into account, and the supervisory system should be re-examined to adapt to them. There had been discussions in the IMEC group on how supervision should function. The ILO now acted as though it were an international tribunal, with too much emphasis on findings of right or wrong and too little attention to why certain Conventions were not adhered to. This should be studied, and employers’ and workers’ organizations should cooperate to this effect to implement the findings of the supervisory bodies with the ILO’s technical assistance. More efforts were therefore needed to promote standards and to make the existing supervisory system more effective, and this should be the subject of a new document that should be submitted to the Committee.

71. The representative of the Government of New Zealand stated that while her Government fully supported the enhancement of the supervisory mechanism, it could not support the proposals made in the document. There should be no increase in the levels of supervision, and there should be greater concentration on improving the existing mechanism. She supported the decision reflected in paragraph 5 concerning reports on the reasons for non-ratification of the fundamental Conventions, and there should be further examination of how to eliminate the obstacles to ratification. Complaints procedures should apply only to countries that had ratified the Conventions concerned.

72. The representative of the Government of Mexico expressed his agreement with the statement by the Government of Spain.

73. The Employer members noted that some Government representatives had expressed support for the creation of a standing committee to handle complaints. They pointed out that the Employer members of such committees were chosen for their particular knowledge of the subject concerned, which would be a problem in the case of a standing committee. They also noted that the flow of complaints was increasing already, and that, if the establishment of such a committee were to increase the flow of complaints, this could be a problem for the Office.

74. The Chairman noted that the document had given rise to a very rich discussion which could provide the basis for a new examination of the subject at the Committee’s next meeting. This was an extremely interesting question, but a very sensitive one. There was a consensus that it should continue to be discussed on the basis of a document that would take into account all the points raised in the Committee.

75. The representative of the Government of Germany stated that he did not wish to be associated with a consensus that allowed continued discussion of the
extension of the Committee on Freedom of Association procedure. They did not wish to break a consensus, but the opinion of his Government would not change on this point.

76. The Worker members stated that a new document should emphasize the points made in paragraph 11 of the present document concerning a new complaints procedure. The discussions in the present committee meant that a new document should take up the technical and legal points discussed at the present session.

General status report on ILO action concerning discrimination in employment and occupation

77. The Committee was called upon to examine a document taking stock of the ILO's activities in the fight against discrimination in employment and occupation. Part I of the report deals with activities to supervise and promote the application of Conventions concerning discrimination, including the special survey by the Committee of Experts on Convention No. 111. Parts IV, V and VI of the report examine ILO activities relating to international migration for employment, activities to promote the non-discrimination of disabled workers and the report on discrimination against workers in the occupied Arab territories.

78. The Employer members took note of the special survey by the Committee of Experts on Convention No. 111, especially paragraph 15 in which the Committee referred to the emergence of other grounds of discrimination besides the seven listed in Convention No. 111 and its accompanying Recommendation (No. 111), i.e. age, state of health and sexual orientation. However, the Employer members did not agree with the suggestion made by the Committee of Experts (in paragraph 20 of the report) to examine the possibility of including in Convention No. 111, in an additional protocol open to specific ratification, the three above-mentioned grounds. This proposal did not comply with the Governing Body's previous decision not to revise this Convention, even in the form of a protocol.

79. The Employer members noted with interest that the ILO's activities to support migrant workers have contributed significantly to the acceptance of the principle of equality of treatment for migrant workers and the elimination of discrimination against them. Speaking in her capacity as Employer member of the Netherlands, the Employer Vice-Chairman described as tendentious the content of paragraph 32 of the report, especially the reference to the Bovenkerk 1995 report which stated that the possibility of migrant workers actually finding a job in the Netherlands — for example in the case of a Moroccan applicant — were almost zero. In this respect, she pointed out that a national agreement had been signed between employers and workers for the 1991-95 period, which aimed to create 60,000 jobs for young people and minority groups including migrants; she added that 50,000 jobs had already been found and, as the agreement had been extended, she was sure that the objective of 60,000 jobs would be attained. She also regretted that the report failed to mention the new legislation on migrant

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workers which provided them with considerable protection. The Employer members were very pleased to note the Officers' efforts to develop activities for disabled workers. They also took note of the information on the situation of workers in the occupied Arab territories. They described as historic the first meeting recently attended by both Israeli and Palestinian employers.

80. The Worker members appreciated the information provided in the report. They noted with satisfaction the new ratifications registered and encouraged the Office to continue its work of promoting ratifications of Conventions. It was significant that the Committee of Experts had acknowledged that discrimination based on sex had increased in all countries. Concerning the new grounds of discrimination based on age, state of health and sexual orientation, the Worker members agreed with the Committee of Expert's proposal to examine the possibility of adding these grounds to the Convention, by means of an additional protocol open to specific ratification. They recognized the importance of continuing work to help migrant workers, including measures to follow up the recommendations of the International Conference on Population and Development in Cairo in 1994 and of the World Summit for Social Development in Copenhagen in 1995. They requested that the Office continue activities in favour of migrant workers, including the application of measures taken by the Governing Body in this area. They took note of the information concerning workers in the occupied Arab territories, stressed the importance of the ILO's role in and contribution to the peace process in this region and were awaiting the mission report of the Director-General's representatives in these territories.

81. The representative of the Government of Qatar, speaking on behalf of the Arab countries, thanked the Committee for having accepted his proposal to examine once again the question of discrimination against workers in the occupied Arab territories at this session. He thanked the Director-General for activities involving these territories and expressed the hope that a new mission would be sent to these territories and that the report of this mission would be discussed at the next session of the International Labour Conference.

82. The representative of the Government of Germany shared the misgivings of the Employers' group concerning the extension of grounds of discrimination. He hoped that the matter of discrimination against migrant workers would not be contained in the next report submitted for discussion to this Committee. He was pleased about the vital work carried out by the Office in the occupied Arab territories.

83. The representative of the Government of Sudan agreed with the statement of the representative of the Government of Qatar. He pointed out that recent events had worsened the situation of workers in the occupied Arab territories and requested that the ILO step up its aid to them.

84. The representative of the Government of Egypt supported the statement made by the representative of the Government of Qatar on behalf of the Arab countries. She thanked the ILO for its efforts to improve the living and working conditions of workers in the occupied Arab territories. She hoped that adequate financial resources would be made available to these territories and that ILO missions in these territories be continued until they were no longer necessary.
85. The representative of the Government of Brazil stressed the importance of the technical assistance recently received from the ILO to promote the application of Convention No. 111. As a result of this assistance, a Presidential Decree, which had just been published in the *Official Gazette* of Brazil, set up a tripartite group within the Ministry of Labour to examine the matter of discrimination. In May 1996, the Ministry of Labour would organize, with the cooperation of the ILO, a seminar on matters of discrimination based on sex and race. This seminar, to include representatives from the various ministries (education, justice, social security, labour and public service) and women’s organizations, would attempt to train these representatives to act as multipliers in the area of discrimination and to exchange information on developments in this area. She saw no objection to examining the possibility of adding other grounds of discrimination to Convention No. 111 by means of an additional protocol.

86. A representative of the Director-General (Director of the International Labour Standards Department) pointed out, in reply to the representative of the Government of Qatar, that the Director-General’s mission in the occupied territories had already taken place and that the report of this mission was being prepared and would be submitted to the next session of the International Labour Conference.

87. The Worker members expressed surprise at the statement by the representative of the Government of Germany even if they could understand the reasons why it had been made. There could be no doubt that discrimination against migrant workers continued to be a serious problem in industrialized countries, as elsewhere. Work on this question should be maintained.

88. The Committee took note of the Office paper.

**UNESCO draft Recommendation concerning the Status of Higher Education Teaching Personnel**

89. The Committee had before it a paper summarizing the contents of the draft Recommendation which had been sent to the ILO by the Director-General of UNESCO in February 1996. Copies of the draft Recommendation were also available to the Committee. In addition to the substantive contents, the paper before the Committee raised questions concerning the position of the ILO with regard to the supervisory mechanisms foreseen in the draft Recommendation. It invited the Committee to make recommendations to the Governing Body concerning the contents of the draft Recommendation within the ILO’s fields of competence and the procedures for the monitoring of the instrument if adopted, in view of the ILO’s participation in the UNESCO meeting of government experts to be convened in October 1996 for the purpose of making recommendations on these questions to the UNESCO General Conference.

90. The representative of the Director-General of UNESCO, invited to speak by the Chairman, noted the excellent cooperation with the ILO over the last four years in the elaboration of the draft Recommendation. If adopted, the instrument would enhance international efforts to promote the status of higher education.

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teachers who were not covered by the terms of the ILO/UNESCO Recommendation concerning the Status of Teachers adopted in 1966. Following the present discussion in the Governing Body of the ILO, and comments received by UNESCO member States, the draft text would be further examined at the UNESCO meeting of government experts to be held in October, prior to consideration by the 29th Session of the UNESCO General Conference in November 1997.

91. The Employer members stated that they had not been able to review the text of the draft Recommendation at the group meeting preceding the discussion, and for this reason were not in a position to comment on the substantive parts of the text. They noted the point raised in paragraph 7 of the paper with regard to the ILO's responsibility for the supervision of international labour standards; this required no further comments. In the absence of an understanding as to what the draft text would actually consist of, the Employer members reserved their position on the point for decision contained in paragraph 10.

92. The Worker members expressed their satisfaction with the outcome of the consultations between the ILO and UNESCO, as indicated in paragraphs 4 and 5 of the paper before the Committee. The Office should be encouraged to continue consultations with UNESCO in order to resolve the outstanding question concerning the supervisory mechanisms for the instrument pointed out in paragraph 7. This should be possible since it had already been done for the 1966 Recommendation. The Worker members felt that the best and most cost-effective solution lay in the extension of the mandate of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART). As a joint body with long experience in the monitoring of this related instrument, it was well-placed to ensure proper monitoring of both UNESCO and ILO areas of competence. The ILO could certainly not leave supervision of international labour standards to UNESCO or any other body. In supporting the point for decision in paragraph 10, the Worker members wished to see the Office make its final comments on the relevant sections of the draft Recommendation of concern to the ILO in the course of the UNESCO experts meeting, and to reiterate its suggestion that the supervision of the instrument, if adopted, should be dealt with by the extension of the CEART mandate. In the event that the mandate was reconsidered, the Worker members requested a re-examination of the working methods to allow direct participation by teachers' unions in the meetings of CEART.

93. The representative of the Government of Germany, also noting that there had not been sufficient time to consider the draft text of the Recommendation in great detail, nevertheless stated with regard to paragraphs 50-52 that in his country university professors were civil servants regulated by legislation which did not accord to them the right to collective bargaining. He made it clear that his Government's acceptance of the point for decision in paragraph 10 did not prejudge its position regarding the content of the draft Recommendation within the UNESCO bodies that would discuss these questions. He supported the recommendation that the CEART undertake the monitoring of the new instrument, if it was adopted. Whether monitoring standards on schoolteachers or university professors, the idea was a sound and cost-effective proposal.
94. The representative of the Government of Spain observed that he had direct experience in these matters as a former member of the university teaching profession. As in Germany, university professors were civil servants with a different legal and administrative status. It would be difficult, therefore, for all ILO Conventions mentioned in the draft Recommendation and its annex to be fully applied to them. Some issues, such as negotiations, might have to be considered in the light of more specific standards, such as Convention No. 151, whereas other issues, such as the autonomy of universities and the academic freedom of professors, would require careful consideration of the implications of standards on employment and working conditions. It would be useful for the ILO and UNESCO to further amplify the text to resolve these difficulties. Moreover, these concerns raised questions of how best to monitor such an instrument, and in view of the links between different questions, his Government supported the position of the representative of the Government of Germany that the CEART was best placed to carry out this task.

95. The Committee accordingly recommends that the Governing Body —

(a) invite the Director-General to ensure ILO participation in the UNESCO meeting of experts convened to further consider the draft Recommendation on the Status of Higher Education Teaching Personnel, and to present its viewpoints on the text and any proposed modifications;

(b) invite the Director-General to reiterate to the Director-General of UNESCO the position of the ILO that responsibility for monitoring the Recommendation's application, if adopted, should be conferred on the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers, subject to approval for an extension of its mandate by the competent bodies of the ILO and of UNESCO;

(c) decide that the Committee on Legal Issues and International Standards should receive a report on the outcome of these further consultations at the 267th Session of the Governing Body (November 1996).

Tribute to Miss Hak

96. Mr. Noakes (Employer member) expressed the regret of the Employers at the departure of Miss Hak, as this was the last session of the Governing Body in which she would participate. He placed on record their deep appreciation of her work and of the distinguished manner in which she had defended employers' interests. She would be remembered for her deep attachment to dialogue and consensus.

97. Mr. Parrot (Worker member), speaking both personally and on behalf of all the Worker members, expressed his appreciation of Miss Hak's knowledge of ILO labour standards, her negotiating skills and her readiness to find solutions. Above all, he appreciated the fact that she stood by agreements she had made. Her record in the ILO went back before the Committee on Legal Issues and International Labour Standards, to the former Committee on Discrimination and
the now dissolved Conference Committee on Action against Apartheid. In the latter she had played a role that had been one of the major factors for change in South Africa. Although he had not always agreed with Miss Hak, he respected her integrity and admired her skills and commitment to the values of social justice and human rights, the values at the very heart of the ILO.

98. The representative of the Government of the Philippines, speaking on behalf of the Government group and also on behalf of one observer Government for whose democratization Miss Hak had played an important role, applauded her firm commitment to the ILO. While he also had not always agreed with her, he appreciated the fact that differences of opinion were the spark of revitalization in any organization. In his opinion, Miss Hak represented the best in the ILO.

99. The Chairman associated himself with all these remarks.

100. Miss Hak thanked all the speakers and stated that she had worked on the various Committees of the ILO with great pleasure. She had always had good relations with the staff. Her generation had always sought consensus with trade unions, not conflict. The work towards creating a new South Africa had been a great achievement. She would be leaving for good, leaving a new set of advocates for consensus.


Points for decision: Paragraph 24;
Paragraph 95.