NINTH ITEM ON THE AGENDA

Reports of the Committee on Legal Issues and International Labour Standards

Second report: International labour standards

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

1. The Committee had before it the report of its Working Party on Policy regarding the Revision of Standards, which was divided into two parts concerning respectively possible amendments to the Constitution and Conference Standing Orders to enable the Conference to abrogate or otherwise terminate obsolete international labour Conventions, and Conventions in need of revision.

2. Presenting the reports, the representative of the Government of France, Chairperson of the Working Party, welcomed the excellent and constructive climate in the Working Party. As regards the first part of the report, concerning possible amendments to the Constitution and Conference Standing Orders, the Working Party had examined the various points in detail and approved the amendments proposed in the Office paper. It now sought the inclusion of this item on the agenda of the Conference in 1997. As stated in paragraph 38 of the first part of the report, if the decision were to be taken at the current session, the Governing Body would have to take a unanimous decision. One specific point still needed to be resolved, concerning the phrase in brackets in the proposed new article 19(9) of the Constitution, on which he invited the Legal Adviser to provide clarification. As regards the second part of the report, concerning Conventions in need of revision, he stressed the value of the methodology followed by the Working Party in examining the Conventions. He suggested that the Working Party should have an additional day made available for its work in order to deal with the considerable mandate assigned to it. The extra day could be for example in conjunction with the Governing Body session in June, and the Working Party would then report to the Governing Body in November.
Part I: Possible amendments to the Constitution and Conference
Standing Orders to enable the Conference to abrogate or otherwise terminate obsolete international labour Conventions

3. The Employer members supported the first part of the report of the Working Party, and recommended including an item concerning the amendments on the agenda of the Conference in 1997.

4. The Worker members expressed agreement with the recommendations in paragraph 40 of the first part of the report, concerning the amendments, and recalled that the question of the phrase in brackets in the proposed new article 19(9) of the Constitution had still to be resolved.

5. The Legal Adviser explained that he had asked the Office to verify whether the phrase in brackets, which concerned the possibility for two or more Members to remain bound by the obligations arising from an abrogated Convention ("contracting out") was necessary from a legal point of view. After an examination of the letter and the spirit of article 5 of the Vienna Convention on the Law of Treaties of 1969, it now seemed that the phrase in brackets could be abandoned. The Vienna Convention stated that, as regards treaties adopted "within an international organization", the Convention applied "without prejudice to any relevant rules of the organization". The adoption of the amendment in question would in this respect introduce relevant rules regarding termination. He then noted that this article made no distinction between treaties adopted "within the organization" according to the date of their adoption; he stressed that the notion of a "relevant rule" was very broad and covered the logic and constitutional practice of the organization. According to the Constitution and the constitutional practice of the ILO, if international labour Conventions were an essential means of attaining the objectives of the Organization, their raison d'être was nevertheless conditional on their capacity to accomplish those objectives. The termination of Conventions that the entire Organization no longer considered capable of contributing to its objectives was hence inherent to the logic of the constitutional system that the proposed amendment effectively embodied.

6. The representatives of the Governments of Canada, Finland, Italy and the United States congratulated the Working Party on its work. The representative of the Government of the United States stressed that the abrogation of a Convention should be the subject of careful analysis and consensus. In addition, the work of the Working Party to make the body of standards more relevant and "legible" was quite encouraging. The representatives of the Governments of Canada and Italy also supported the proposal by the Chairman of the Working Party for the frequency of its meetings to be increased.

7. The Committee unanimously supported the proposed amendments and the proposal to include them on the agenda of the Conference in 1997. The phrase between brackets in the proposed text of article 19.9 of the Constitution was deleted.

8. The Committee on Legal Issues and International Labour Standards accordingly recommends that the Governing Body --
a. place on the agenda of the 85th Session of the International Labour Conference (1997), in accordance with the provisions of article 10, paragraph 1 of the Standing Orders of the Governing Body, the question of an amendment to the Constitution of the ILO, which would add a new paragraph 9 to article 19 to enable the International Labour Conference, acting on a proposal of the Governing Body, to abrogate, by a majority of two-thirds of the votes of delegates present, any Convention adopted in accordance with the provisions of article 19 of the Constitution if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization;

b. recommend to the International Labour Conference that at the same time it adopt the amendments to its Standing Orders that are necessary for the exercise of this power, as shown in the Appendix to this report;

c. adopt, following such amendment of the Conference Standing Orders, the amendments to its own Standing Orders which also appear in the Appendix to this report.

Part II: Conventions in need of revision (Phase 2)

9. The Worker members expressed agreement with the points for decision. However, they requested the following corrections: in paragraph 49, an additional subparagraph should be added to recommend that the Governing Body invite member States to submit reports under article 19 of the Constitution for Convention No. 89 and its Protocol, as recommended for Conventions Nos. 4 and 41; in paragraph 53(a) the words "at the same time" should be deleted in the English and Spanish versions; in paragraph 69(a) a reference should be added to the Protocol of 1995 to Convention No. 81. In addition, the Worker members requested confirmation that the scope of application of Convention No. 176 covered that of Convention No. 45.

10. The Employer members also supported the points for decision, and agreed with the changes proposed by the Workers. They also requested the addition, at the end of paragraph 19, of the sentence: "With this in view, it would be preferable to examine the consequences of a possible ratification of Convention No. 131 and to re-examine the question at an appropriate time."

11. The representative of the Director-General confirmed that the corrections requested by the Employer and Worker members would be reflected in the report. He drew attention to paragraph 52 of the report concerning the scope of application of Convention No. 176.

12. The representative of the Government of the United Kingdom expressed her satisfaction with the work of the Working Party, and supported the proposal by the Chairman of the Working Party to increase the frequency of its meetings.

13. The Chairperson of the Committee congratulated the members of the Working Party on the manner in which they had handled their work, and the Employer and Worker Vice-Chairmen on the wisdom they had shown in the proceedings.
14. The Committee recommends that the Governing Body --

a. take note of the part of the report of the Working Party on Policy regarding the Revision of Standards concerning Conventions in need of revision (Phase 2);(3)

b. approve the proposals that met with a consensus in the Working Party, namely:

i. the proposals to revise Conventions Nos. 3 and 103 (see paragraphs 42-43 of the report of the Working Party);

ii. the request for a general survey under article 19 of the Constitution (see paragraphs 32, 47-49 and 62), concerning:
   - hours of work: Conventions Nos. 1 and 30;
   - night work of women: Conventions Nos. 4, 41, 89 and its Protocol of 1990;
   - migrant workers: Conventions Nos. 97 and 143;

iii. the proposals to promote the ratification of updated Conventions (Nos. 81 and its Protocol of 1995, 87, 89 and its Protocol of 1990, 98, 129, 130, 132, 168 and 173) and, as appropriate, to denounce the earlier Conventions (Nos. 4, 24, 25, 41, 44, 45 and 101) (see paragraphs 35, 37, 38, 47, 48, 53, 68 and 69 of the report of the Working Party);

iv. the requests to States parties for information and/or consultations in respect of Conventions Nos. 82, 83, 84, 85, 89 and its Protocol of 1990, 94, 95, 130, 168, 171 and 176 (see paragraphs 22, 26, 37, 38, 47-49, 53 and 66-69);

v. the maintenance of the status quo in the case of Convention No. 88 (see paragraph 12);

vi. the deferral of the examination of Conventions Nos. 2, 6, 26, 90, 99 and 131 to the next meeting of the Working Party;

vii. the preparation by the Office, for the next meeting of the Working Party:
   - of a document examining further the need to revise the Conventions (phase 3); and
   - of another document concerning the steps taken to follow up the policy decision of the Governing Body with regard to the revision of standards;

viii. the submission of recommendations to the Governing Body on the aforementioned proposals, and on any other relevant matter.

II. Standard-setting policy: The strengthening of the ILO's supervisory system

15. In accordance with the decision taken by the Governing Body at its 265th Session (March 1996), the Committee has before it a document(4) which examines in particular the legal aspects of the possible adoption of new supervisory procedures concerning forced labour and discrimination.

16. The Director-General introduced the document by stating that this document of relatively limited scope showed that there was indeed a constitutional basis for the creation of a procedure to promote the application of basic social rights to be added to the already existing supervisory procedures. He emphasized the importance of this discussion by placing it in the current international economic context and emphasized that the ILO's credibility was at stake. He concluded by expressing the hope that the
Organization would give a strong and clear signal to the outside world by providing the ILO with a mechanism equal to the challenges which lay before it.

17. The Worker members welcomed the statement of the Director-General, in particular as regards the strong and clear signal which the Organization should send to the outside world. They believed that this could not be more apposite since the ministerial meeting of the member States of the World Trade Organization was shortly to be held. The strengthening of the ILO's supervisory system, which was a matter of capital importance in their eyes, should not be examined in an isolated manner but together with those of the promotion of standards, the adoption of new international labour standards and the recent revision of existing standards. During the discussion of this question in March 1996, the Employer members and some Governments categorically opposed the adoption of new supervisory machinery, similar to that already existing for freedom of association, mainly for legal reasons. The Worker members praised the quality of the document placed before the Committee which reflected their main concern, namely that there was indeed a constitutional basis for the establishment of a new supervisory procedure along the lines of that of the Committee on Freedom of Association. According to paragraphs 5 to 14 of this document, it was clear that the Organization had already examined this question and that the establishment of the Committee on Freedom of Association was the fruit of this analysis. As regards the analysis made by the Legal Adviser at the time, Mr. Jenks, namely that "... if the aims and objectives of the Organization can only be enforced by way of ratified Conventions, they can be promoted in other ways, and the establishment of a fact-finding commission according to the procedure adopted by the Governing Body constituted a legitimate way of promoting the aims of the Organization", this also remained valid. The abolition of forced labour and discrimination in employment and occupation was undeniably one of the objectives assigned to the Organization, and that is why the Workers' group could not but endorse the conclusions formulated in this document and call on the Committee to engage in not a legal debate but a political debate on the appropriateness of establishing a special supervisory mechanism for the questions of forced labour and discrimination -- along the lines of that existing for freedom of association. They were already able to reply to three of the questions posed in paragraph 22 of the document: (a) as regard the specific content of the fundamental rights to be promoted through such a procedure, they cited Conventions Nos. 29, 105, 100 and 111 (the Minimum Age Convention, 1973 (No. 138) thus being excluded); (b) the mechanics of this new procedure should be similar to that of the Committee on Freedom of Association; and (c) financing should be charged to the regular budget. Recalling that the OECD had recently noted the effectiveness of the supervisory machinery developed by the ILO as regards freedom of association, the Worker members concluded by stating that the Organization had no other choice than to establish machinery capable of ensuring the real application of the principles which it defends, if it did not want to compromise its credibility.

18. The Employer members stated that they had taken note of the Director-General's message and the position of the Workers' group. The Employers fully supported the declared objective, i.e. to ensure the effective application of Conventions deemed fundamental because they refer to human rights. They assured the Committee that the Employers' group was also mindful of the ILO's credibility, and in particular its standard-setting system, and believed that the discussions initiated on the revision of standards and more generally on the future of standards was an important step in the right direction.
They vigorously opposed the adoption of a new supervisory mechanism. If the objective was one of efficiency, the Employer members believed that the ILO should emphasize the promotion of its standards through technical assistance to member States with a view to helping them overcome obstacles to ratification or difficulties of application. If these States are Members of the ILO it is because they share the values defended by the Organization but, for one reason or another, they are not able to ratify one or the other of its basic Conventions or to apply them appropriately. In the same way, the Employer members believed that the Committee could reflect on the ways and means of strengthening and tightening up existing supervisory machinery.

19. The representative of the Government of Germany recalled that, during the previous session, his delegation had pointed out that it opposed the proposal to extend to Conventions other than Nos. 87 and 98 the procedure applicable to the Committee on Freedom of Association. He pointed out that the position of his Government on the strengthening of the supervisory function of the ILO had changed somewhat, in particular as a result of the debate initiated within this Committee on the revision of standards and the conclusions of the World Summit for Social Development (Copenhagen, 6-12 March 1995) which invited the ILO, inter alia, to protect and promote the respect of the basic rights of workers, in particular by prohibiting forced labour and child labour and by eliminating discrimination in employment. It would in fact be contradictory, on the eve of the ministerial meeting of the member States of the WTO in Singapore, for the ILO to oppose the adoption of machinery to strengthen the supervisory system for international labour standards. That is why he said his Government was ready to envisage a prudent extension of the supervisory mechanics to instruments concerning forced labour, which include the prohibition of child labour, at least in its most intolerable forms, but that the extension of the complaints procedure to standards prohibiting discriminating in employment and occupation should be deferred. This new mechanism should be limited to really exceptional cases of flagrant violation of the principles which the member States had fully endorsed on becoming Members of the Organization and should distinguish between the States which have ratified the Conventions in question and those which have not.

20. The representative of the Government of Italy believed that the importance of the question was such that it was clear that the Committee was only embarking on a discussion which would certainly be long and difficult. After emphasizing that his Government had ratified the fundamental instruments in question, he said that the discussion raised the question of whether, on becoming a Member of the ILO, a State automatically lost part of its sovereignty. At all events, it was not the substance of the rights in question which posed a problem but rather what could be done by the ILO to ensure that they are applied in practice and that all member States ratified these Conventions. Although he noted that the document was limited to two spheres of basic rights defended by the Organization, namely forced labour (including child labour) and non-discrimination in employment and occupation, he recalled that it was on a quite exceptional basis that the Organization had set up a specific supervisory mechanism for freedom of association and that this mechanism should remain exceptional if it were not to be weakened. Even if the document drew attention to article 10 of the ILO Constitution, which stipulates that the ILO can conduct "such special investigations as may be ordered by the Conference or by the Governing Body", he said that, under the provisions of article 19(5)(e) of the ILO Constitution, there was no further obligation than that of making periodic reports on non-ratified Conventions. This power of the Office to
conduct investigations, emphasized by the document, did not dissipate his delegation's doubts about the constitutional basis of a procedure which would oblige States to apply a Convention which they had not ratified. Finally, he also questioned the interest of establishing a mechanism which would not set up a systematic supervision of the application of a given Convention, but only supervision on a case-by-case basis.

21. The representative of the Government of France took note of the Director-General's message and said that his delegation was generally of the view that the question before the Committee involved the credibility of the Organization as regards its place and role in the international community. The question raised was as follows: was it legitimate for the ILO to envisage a strengthening of its supervisory system as regards the objectives assigned to it? If the reply to this question were yes, the legal or technical arguments were therefore only incidental. In explaining the position of his Government, he referred to the doctrine of the French Constitutional Council which had established a constitutional corpus of legality on the basis of the French Constitution of 1958, currently in force, the Declaration of the Rights of Man and of the Citizen of 1789, and the fundamental principles of the Republic enshrined in the Preamble of the Constitution of 1946. He pointed out that he had had the curiosity to examine the ILO Constitution of 1919 and had been able to note that the proclaimed objectives of the Organization included the abolition of child labour and of discrimination in employment and occupation (article 41 (6)). There was undeniably a constitutional basis for the analysis now being undertaken by the Committee; the ILO's mandate, which is to defend the rights of working people, authorizes it to pursue further a discussion which was only just beginning.

22. The representative of the Government of Spain said that he had taken note of the introductory statement by the Director-General and the respective positions of the Worker and Employer groups. The Employer members had emphasized the function of promotion, whereas the document before the Committee concerned the strengthening of the supervision of standards. These two functions could be pursued jointly. Secondly, he believed that, even though the document presented was excellent, the legal debate on the constitutional basis of the proposed procedure was not exhausted. The Worker members had stated that they would like to see the establishment of a complaints procedure applicable to all Member governments of the ILO, whether or not they had ratified the respective Conventions. Now, the ILO Constitution, as well as international labour Conventions, are international treaties and, as such, the Vienna Convention on the Law of Treaties is applicable to them. He recalled that, under the Vienna Convention, only ratification creates obligations for a member State and that there is no question of derogation from this principle and reserving the same treatment to a State which has not ratified a Convention as to one which has ratified a Convention. He believed that some of the phrases appearing in paragraph 13 of the document could lead very far. He thus mentioned the statement made that the principle of freedom of association had become a customary rule above the Conventions and called upon the Committee to conform strictly to treaty law and the jurisprudence of the International Court of Justice in this respect. He subsequently raised the question of the means available to the Organization to guarantee the effective application of international labour standards, it being understood that the most effective method would be to encourage governments to ratify the Conventions in question. He concluded by stressing the need for the Committee to pursue its analysis of the question of strengthening the ILO's supervisory system but also of the question of promoting standards. Other options should be
examined and replies found to such questions as the power to submit complaints, the financing of the mechanism, and the possibility that the resulting publicity was often sufficient to ensure the redress of abuse.

23. The representative of the Government of China said that his Government supported the position set forth by the Employers. He believed that it was very clear that the only objective of the proposal made in the document was to enable the lodging of complaints against a member State of the ILO which had not ratified Conventions Nos. 29, 105, 100 and 111. Of course, the document stated that there were no legal obstacles to the adoption of new supervisory procedures for the questions of forced labour and discrimination, but he pointed out that the legal problems had not yet been exhaustively examined. The ILO had carried out important work in the development of international labour standards but there was still some divergence of opinion regarding their application and the Organization should not be transformed into a supervisory court. For this reason, he called for a development of technical assistance to member States to help them overcome obstacles to ratification or the application of these instruments. The adoption of the machinery described in the document was not consistent with the long-term interests of the Organization, since it did not encourage States to ratify the Conventions in question. If the ILO wanted to improve its credibility with the outside world, it should not forget that it also had a role to play, as was pointed out at the World Summit for Social Development (Copenhagen, 1995), in the promotion of employment and the fight against poverty, in addition to the promotion of the basic rights of workers. Finally, the representative of the Government of China formally objected to the reference to Case No. 1500 of the Committee on Freedom of Association, mentioned in the document, believing that this case concerned interference in the internal affairs of the country in question rather than the defence of freedom of association.

24. The representative of the Government of Finland congratulated the Office on the quality of the document before the Committee. He expressed his Government's support for any attempt to strengthen the supervisory machinery of the ILO, especially as regards basic human rights and thus endorsed the conclusions appearing in paragraph 22 of the document. He believed that it was clear that the abolition of forced labour and discrimination in employment were fundamental principles of the ILO and that it was legitimate to ask questions about the appropriateness of setting up a supervisory procedure to ensure a generalized application rather than on a case-by-case basis.

25. The representative of the Government of Pakistan said that Indonesia would subsequently take the floor to set forth the position of the Asia and Pacific group, which it fully endorsed. He recalled that his Government had ratified five of the seven basic ILO Conventions (including Conventions Nos. 29, 105 and 111) and that he had replied to the observations of the Committee of Experts on the Application of Conventions and Recommendations. He pointed out that his country was ready to ratify a Convention on the most intolerable forms of child labour if such a Convention were drawn up. The document before the Committee was intended to be purely legal but, in fact, the reasoning used was tortuous and his Government could not endorse the conclusion reached by the secretariat. First, if such a reasoning were followed, this would open up the way to the possible establishment of new supervisory machinery for all the instruments adopted by the ILO. He emphasized that the machinery established for freedom of association was unique and should remain so. Furthermore, noting that the authority of the Committee
on Freedom of Association was based on its special place within the existing supervisory machinery, he wondered whether it would not be weakened by the multiplication of similar bodies. He expressed the fear that the adoption of new machinery might also weaken the authority of the Committee of Experts on the Application of Conventions and Recommendations and the tripartite Conference Committee on the Application of Standards. He reiterated his delegation's conviction that the universal adoption of ILO basic Conventions and effective recourse to existing machinery were the only means of ensuring the full application of the objectives defended by the ILO.

26. The representative of the Government of Indonesia, speaking on behalf of the Asia and Pacific group, said that her group had noted that the question of the strengthening of the ILO's supervisory system had already been examined on two occasions by the Governing Body and that the latter had not endorsed the proposal. The Asia and Pacific group believed that the promotion of international labour standards should essentially be achieved through technical assistance with a view to helping member States develop economic and social structures enabling them to ratify and apply ILO Conventions. It was therefore a question of helping them to identify and overcome obstacles to ratification. She noted that the document prepared by the secretariat requested the Committee to take a position on the specific content of the fundamental rights to be promoted by such a procedure as well as on its operating and financing methods, although the Governing Body had not approved the adoption of new supervisory machinery. The Asia and Pacific group proposed that, in future, the Committee should reflect on the ways and means of strengthening in a credible manner the existing supervisory procedures with a view to improving their transparency, objectivity and impartiality.

27. The representative of the Government of Bangladesh thanked the secretariat for the lucid document which it had prepared on a complex question and the Director-General for having addressed the Committee to emphasize the importance which he attached to the question of the supervision of ILO standards. He pointed out that his Government shared the idea that forced labour and discrimination in employment should be eradicated but noted that there was no consensus within the Committee on the appropriateness of adopting new supervisory machinery for these questions, despite the legal clarifications provided by the document. For this reason, he insisted on the importance of strengthening the existing machinery to make it more effective, credible and transparent, and on the danger posed by giving priority to certain standards of the Organization to the detriment of others. He also recalled the importance of technical cooperation in the promotion of the ratification of ILO Conventions and emphasized that the strengthening of existing supervisory procedures without the strengthening of technical cooperation would not increase the ILO's credibility.

28. The representative of the Government of Canada believed that it was too early, at this stage in the debate, to undertake a legal discussion. As some speakers had already emphasized, it was important for the ILO to have a credible and coherent position and to express clearly its commitment to the promotion of the basic rights of workers, on the eve of the meeting of the member States of the WTO in Singapore. She said that her Government supported a strengthening of the ILO supervisory machinery if it helped member States in their efforts to improve the respect of basic rights and that it supported the positions of the Government members of France and Italy in favour of a continuation of the tripartite dialogue within the Committee.
29. The representative of the Government of the United States said that, today more than ever, it was accepted that member States of the international community had the duty to recognize the value of certain basic rights of workers. The OECD had recognized the fundamental role of the ILO in the sphere of workers' rights and this was also true, although to a lesser extent, of the WTO, the Bretton Woods institutions, and the regional trade agreements which recently recognized the virtue of the fundamental principles defended by the Organization. The ILO was the only international organization capable of gathering together and analysing the data respecting the application of international labour standards, and the Members of the Organization should accept the challenge posed by a strengthening of its existing supervisory system. Since the document had confirmed that there were no legal obstacles, it was now a question of reflecting on the most appropriate way or ways to proceed. For her Government, it was indispensable, in this context, to undertake a critical overall examination of all the existing standard-setting activities, including both successes and failures. This should be done carefully and, above all, without any haste. The process for the revision of standards which is currently under way, was undoubtedly a step in the right direction.

30. The representative of the Government of Argentina welcomed the quality of the discussions. He noted that it was clear from paragraph 22 of the document presented by the Office that the questions of forced labour and discrimination were part of basic human rights and that it would be legally possible to set up new supervisory machinery. His delegation believed that a strengthening of the existing supervisory machinery was indispensable before any examination of the possible establishment of new machinery. He therefore called for a continuation of the discussions initiated by the Committee on this question.

31. The representative of the Government of India said that he fully agreed with the point of view expressed by Indonesia on behalf of the Asia and Pacific group. He pointed out that although he understood the reasons behind the proposal appearing in the document before the Committee, his Government believed that the procedure of the Committee on Freedom of Association was an exceptional one and should not be extended to other Conventions. He recalled that India had ratified the Conventions being discussed and that it had therefore voluntarily accepted the obligations resulting from them. The proposal to set up a supervisory procedure applicable to all member States, whether or not they had ratified the respective Conventions, was not acceptable.

32. The representative of the Government of the Republic of Korea recognized that the question of the appropriateness of strengthening the supervisory machinery of the ILO was a controversial matter. He expressed the fear that the adoption of a new supervisory procedure identical to that in force for freedom of association would weaken the authority of the already existing machinery. He therefore called for a more effective solution consisting of greater assistance to member States enabling them to overcome obstacles to ratification and to the effective application of the respective Conventions.

33. The representative of the Government of Japan said that he shared the opinion expressed by Indonesia on behalf of the countries of the Asia and Pacific region. He had listened with attention to the statement by the Director-General that, in the present context of the globalization of the economy, the
ILO had to maintain its credibility. The Government of Japan could only agree with this analysis, but the main question was how to achieve this objective. Noting that all the member States of the Organization recognized the universal value of the principles contained in ILO basic Conventions, he said that the problem was how to achieve the best application of these Conventions in democratic societies. Under the terms of the ILO Constitution, it was by ratification that a member State undertook to apply a Convention. For this reason, the proposal made in the document concerning the adoption of a supervisory mechanism which would be independent of ratification posed a problem to the Japanese delegation. The emphasis should be placed on the promotion of the ratification of fundamental Conventions and their application.

34. The representative of the Government of the Russian Federation recalled that the Governing Body had established a group of ILO Conventions respecting human rights -- which was not furthermore limited to only Conventions concerning forced labour and non-discrimination in employment -- and that it had been agreed to promote their application. All the members of the Committee agreed with this objective, and it was now a question of determining the means of achieve this goal. His delegation believed that the existing machinery was sufficient, even though it could be improved, and noted that this position was shared by a number of Government delegations. He believed that it would be inappropriate and legally difficult to establish special supervisory machinery for a group of Conventions. The legal basis developed in the document was inadequate, in particular as regards whether it was legally possible to demand that a State should apply a Convention which it had not ratified.

35. The representative of the Government of Malaysia said that he supported the strengthening of the existing supervisory machinery. He called that, in 1994, the ASEAN group had submitted a resolution concerning the need to strengthen the ILO supervisory machinery. He endorsed the position taken by the Asia and Pacific group concerning the need to improve the transparency, objectivity and impartiality of the existing supervisory machinery in a non-selective and credible manner, and encouraged the Organization to proceed in this direction. The ILO should furthermore continue to provide its technical assistance to States with a view to promoting international labour standards and should not forget to take into account, in its assessment of the situation, the socio-economic levels of development of member States concerned as well as their efforts to improve the conditions of work of workers. At the same time, the revision of standards which had been initiated by the Committee should at all events continue. His Government believed that it was necessary to adopt a diversified approach to the problems of ratification and the application of fundamental ILO Conventions.

36. The representative of the Government of the United Kingdom noted with interest the document prepared by the Office which clarified the legal implications of the establishment of new supervisory machinery by the ILO and made a decisive contribution to the discussion under way on the promotion of human rights. While her Government was firmly opposed to any extension of the supervisory machinery applicable in the case of freedom of association, it did support the improvement of existing machinery with a view to promoting human rights and welcomed the fact that some measures had already been introduced -- even though much remained to be done. In this respect, she recalled the fear expressed by her Government to the Conference Committee on the Application of Standards (June 1996) in the light of the increase in the number of representations under article 24 of the Constitution and the proposal
which she had made for restricting recourse to article 24 to complaints concerning exclusively the application of fundamental ILO Conventions. She emphasized the importance which her Government attached to technical cooperation as a means of helping countries overcome obstacles to ratification. She concluded by recognizing that the ILO was at the forefront of the debate on the promotion of basic human social rights and that the Director-General was quite right when he insisted on the need for the Organization to continue to examine ways of promoting the human rights for which the ILO was responsible. She expressed agreement with some previous speakers who had said that the Committee was only at the beginning of its discussions on the question of improving the ILO supervisory machinery.

37. An Employer member (Mr. Noakes) recalled that this was the third time the Committee had discussed this question. The Employers' members had already developed the reasons of principle for which they were opposed to a new complaints procedure based on that of the Committee on Freedom of Association. The majority of governments which had participated in the earlier discussions were also opposed to this. The paper before the Committee illustrated amply that the Committee on Freedom of Association procedure had a unique quality and an historical context which cannot be duplicated. The conclusion of this examination was that the Organization had the power to promote the Constitutional objectives and principles by a procedure which brought to light the degree to which the practice of Members may vary from the principles to which they had voluntarily adhered in becoming Members of the ILO. The Employers' members could agree with this conclusion, subject to the undesirability of retroactively binding member States to provisions that were not in force at the time they joined the ILO. The paper attempted to construct a basis for the establishment of a procedure, but to base this on an implied right to freedom from forced labour was a perilous undertaking. The principle of freedom of discrimination was better founded, but only in a limited way. The paper properly concluded that a consensus was needed before proceeding. The Employers were prepared to continue the discussion, based on their belief that the Organization had a role to play, and that it should play that role by securing greater observance of the fundamental principles underlying the core Conventions, especially in cases in which States had been unable, for one reason or another, to ratify these standards. They did not see this as a process by which the Conventions would be watered down: it should not be seen as a substitute for ratification, but as an aid to it. The elements which would be necessary to such a procedure would include the following: (1) it would have to proceed from a consensus; (2) it must not be complaints-based, but should be supervisory and promotional in character; (3) it must have a sound constitutional basis; and (4) it must involve the Organization's existing machinery and its constituents. With goodwill and dialogue it would be possible to establish such a procedure, and they were ready to take part in the discussions. As evidence of this willingness, he drew attention to a resolution of the General Council of the International Organization of Employers, adopted in June 1996, and quoted the following passage from that resolution: "The ILO should continue to promote the ratification and implementation of its core Conventions, including examination of obstacles to the ratification of those Conventions".

38. To supplement the constitutional system of binding Conventions and supervisory machinery, the ILO should develop a parallel means of encouraging observance of the fundamental principles underlying the core Conventions. This should take the form of a statement of principles which should be promoted in a variety of ways, including:
● through actions by member States and by employer' and workers' organizations;
● through the ILO's own technical cooperation programmes;
● through country examinations related to employment policy;
● through action in specific areas of the fundamental principles, such as by intensifying and
  publicizing ILO work on exploitative child labour and supporting an IOE programme of work in
  this important area.

39. They also had further ideas as to the means by which an unchallengeable constitutional basis could
be established, and the means provided for supervising and promoting observance of the principles
underlying the core Conventions. For example, it might be possible to introduce improved reporting
requirements and to make increased use of the Conference Committee on the Application of Standards.

40. The representative of the Government of Chile considered that there could be no doubt concerning
the key objective of eliminating discrimination and forced labour. Irrespective of whether additional
machinery was created, the first need was to promote acceptance of these fundamental rights; the second
was to ensure their implementation. As pointed out, ratified Conventions were not the only tools
available in this area. It was necessary to ensure that the objectives of Conventions were met, and there
was also a need for promotional work and for technical cooperation. It was important to provide
incentives for technical cooperation. Experts in international labour standards were missing in a number
of the multidisciplinary teams, and they were needed to promote the ratification of Conventions and the
implementation of their provisions. The supervisory machinery could be further improved. Alternatives
such as extending the freedom of association machinery had been considered, but the document did not
present that as the only solution. Politically and legally, the door had been left open for other solutions,
as indicated in paragraph 22 of the document. The matter required further discussion over a long period
of time.

41. The representative of the Government of Sweden observed that there was overall agreement that the
fundamental human rights Conventions should be promoted. A variety of means had been mentioned.
Her delegation welcomed the measures taken recently by the ILO in this regard, especially the Director-
General's initiative to address all member States which had not ratified the relevant Conventions, as well
as the decision to use the article 19 procedure for additional reports on these Conventions, according to a
rotating order. However, the ILO should also try to use every means possible to promote those
Conventions. Her Government favoured, in principle, an extension of the supervisory procedures in
accordance with the ideas outlined in the document, in connection with the Conventions concerning
discrimination and forced labour, with the proviso that this be compatible with the constitutional
stipulations, as had been concluded in paragraph 22. She commended the Office on the document, which
contained not only an interesting historical summary but was also a very useful foundation for further
exploration, deliberation and consultation.

42. The representative of the Government of Panama congratulated the Office on the document. It was
essential to strengthen the ILO's supervisory machinery, especially in relation to the fundamental rights
Conventions, but this had to be done carefully, as the introduction of new supervisory machinery could
hamper new ratifications. It was important to have a consensus solution regarding the development of
new machinery. If new procedures were developed, they should apply only to ratified Conventions, as had been stated by the representative of the Government of Spain.

43. The representative of the Government of Hungary expressed appreciation for the document, which was well prepared and timely. His Government shared the reasoning of the German Government and considered that the proposal to create additional supervisory machinery deserved consideration and should be examined accordingly.

44. The representative of the Government of Brazil stated that the importance of the issue could not be denied, but stressed that any decision must take account of the constitutional provisions and the other elements mentioned by the representative of the Government of Spain.

45. The Worker members recalled that the Director-General had asked for a clear and strong signal to strengthen the supervisory machinery. The question was whether that challenge had been met. They felt that an important step had been taken, but it was a step backwards. It was difficult, in such a tripartite body, to listen to statements that were different from what some of those same States had said in other fora. Those States could not say elsewhere that they supported a strengthening of the supervisory procedures but take a different view here. It should not be forgotten that the Organization's concern was for people whose rights were constantly being denied or flouted. No tangible proposals had been made other than those put forward by the Workers' group. Other proposals constituted an attack on the supervisory machinery rather than an attempt to strengthen its effectiveness. A number of Governments and Mr. Noakes had called into question the legal basis for any action to strengthen the procedures along the same lines as those that had been created for freedom of association. Some said they disagreed with the reasoning in the document, but these arguments were not convincing and it could be considered that they were an attempt to avoid having to face the hard issues. It should be recalled that the Governing Body had embarked upon the examination of a number of matters in 1994, all of which should have proceeded in parallel. Unfortunately, no progress had been made regarding measures to strengthen the supervisory machinery. The Workers' group had made specific proposals, but again there was reason to consider that moves to render the system more effective were what made it unattractive for some others. They referred in particular to the statements calling for a global review of the existing machinery, with a view to reinforcing its transparency, impartiality and objectivity, and for limiting the article 24 procedure to the human rights Conventions. If those who had made these proposals stated that they would strengthen the ILO's supervisory machinery, their will to make progress would have to be called into question. Some statements had called for a mechanism based on the principles of Conventions rather than the Conventions themselves. This would not strengthen the machinery -- it would set aside the Conventions themselves, marking yet another step backwards. The only response that would add credibility would be to agree to concrete measures, looking not just to the Singapore meeting but to the future.

46. The Employer members considered that the process was an ongoing one. Within this framework, there had been concurrence concerning the importance of the Conventions, the positive role of the ILO and recognition of the value of technical cooperation. They accepted the existing machinery, but there was a need to identify and correct its weak points. The view had been expressed that what was not
explicit in the Constitution could be made explicit through a new procedure, but this was not their view. Decisions had to be made about how to proceed. There was a basis for consensus and the Employers considered that this was a positive step. As Mr. Noakes had pointed out, there had to be a firm constitutional basis: there were doubts in the present forum, but there had to be a consensus before proceeding. Any new procedure should involve the existing bodies and should not be complaints-based. The Employers were prepared to continue this analysis, which had important legal and political implications.

47. The Deputy Director-General (Mr. Tapiola) stated that the document before the Committee had not proposed any particular machinery. Pains had been taken to produce a document that would provide a good basis for discussion. In the light of the Committee's conclusions, the Office would make further proposals as required.

48. The Chairman observed that the discussion had been rich and interesting even though it might not have moved as quickly as some had hoped. He proposed the following conclusions, which were then distributed in writing in the following form:

1. There is a view shared by all on the importance of promoting the fundamental rights, the principles of which are embodied in the core Conventions.
2. This arises from the mandate of the ILO, and since 1994 it has been one of the specific items on the work programme of the Committee on Legal Issues and International Labour Standards.
3. There are strong expectations on the ILO in this respect, arising from the 1995 World Summit for Social Development and discussions in other organizations, and they have consequences on the credibility of the ILO.
4. The Governing Body should reaffirm its determination to move ahead with concrete steps towards strengthening the application of fundamental rights.
5. This should be based on the following elements:
   - mechanisms should be based on a large consensus;
   - they should be promotional;
   - they should be readily usable by the constituents;
   - they should be responsive to the concerns of the constituents on fundamental rights;
   - they should not create new constitutional obligations;
   - rather, they would enable member States to better realize the aims of the Constitution;
   - promotion of the ratification of Conventions should be continued;
   - the key role of technical cooperation for ratifying and applying Conventions is underlined;
   - the existing mechanism on freedom of association is by no means the only model for the promotion of fundamental rights.
6. After this "beginning with the beginning" we need to know where to go.
7. The next steps to take, to facilitate the dialogue, could consist in the Office preparing a paper, in the light of the different views presented, for the March 1997 meeting of the Committee, outlining how the mechanisms of the ILO could be strengthened to meet the concerns identified.
above.

8. The Office should in this context examine the way in which the Active Partnership Policy and MDTs can be better used as well as ways to strengthen other existing mechanisms (Committee of Experts, Conference Committee on the Application of Standards). This would necessitate a survey of the existing supervisory mechanisms.

9. The Governing Body reaffirms the importance of the separate procedure on freedom of association, which has given and continues to give a unique and valuable contribution in one field of the fundamental rights. New mechanisms and/or the strengthening of other existing ones should not take place to the detriment of this procedure.

10. Once the Governing Body has approved the Committee’s report, appropriate publicity should be given to this consensus on strengthening the ILO's means of action in the field of fundamental labour standards.

49. The Committee suspended the session for consultations on the draft conclusions, and then reconvened.

50. The Workers stated that the document before the Committee spoke of the promotion of fundamental rights, but the subject before the Committee was the strengthening of the ILO's supervisory procedures. They could not accept this formulation, and felt that to correct it would require several days of discussion. They therefore felt compelled to reject the draft presented. They were however ready to discuss the proposals for future work.

51. The Employers agreed in general terms with the document and proposed the following amendments. In the first paragraph, the words after "fundamental rights" should be amended to read, "and the principles in the Constitution, the Declaration of Philadelphia and the fundamental Conventions, and to stress the importance of ratification". The fifth paragraph, second subparagraph, should be amended to read, "they should have both a promotional and a supervisory character". The fifth subparagraph of the same paragraph should be amended by adding at the end: "and must be firmly grounded in the Constitution". In the following subparagraph, "would" should be replaced by "should". In the penultimate subparagraph of the same paragraph, the phrase "for ratifying and applying Conventions", should be replaced by "in achieving the objectives set out in paragraph 1". The seventh paragraph should be amended by deleting the words "the mechanisms of". The following sentence should be added to the end of the eighth paragraph: "This should not exclude the possibility of a new instrument."

52. The representative of the Government of the Islamic Republic of Iran, speaking on behalf of the Asia and Pacific Government group, stated that they supported these conclusions in principle. They looked forward to the report to be prepared for the meeting in March 1997, and would participate actively in that discussion.

53. The Workers stated that their concerns about the inability of the Committee to arrive at a consensus were confirmed by the amendments offered by the Employers.
54. The representative of the Government of the Russian Federation suggested that a compromise proposal could be restricted to agreeing on paragraph 7 of the proposal. If there was agreement, the exact wording could be discussed.

55. The representative of the Government of the United States said that he would be interested to hear the reactions of the Worker and Employer members to the last proposal, but he had heard throughout the discussion that the Committee should continue to examine this subject. Some expression of the way forward was needed, since the paper before the Committee was not accepted.

56. The Workers proposed that the Committee conclude that a document should be prepared for the March 1997 meeting which would identify the different options which existed for the strengthening of the supervisory procedures, including the option covered in the document submitted at the present session, on the basis of the constitutional interpretation contained in the same document.

57. The Employers, referring to the draft conclusions offered by the Chairman, stated that the amendments they had proposed would still be conclusions and should be understood as such. The proposed conclusions asked that the Committee continue its work on this subject. There was a consensus on the need to adopt measures, even if not on the form of the mechanisms. No one was suggesting going beyond the Constitution, but the constitutional framework had limits. A document was needed to facilitate dialogue. The next document might perhaps not be as specific as had been suggested, as this could lead to frustration, but all agreed on the need to proceed. They again proposed a reference to the core Conventions, the Constitution and the Declaration of Philadelphia. As regards the debate on the development of a mechanism, there was a margin for discussion, and it was necessary to be transparent. It should be stated clearly that the Committee had arrived at a number of conclusions which, even though not sufficient for all members, did exist.

58. The Workers agreed that there was no consensus. Their proposal related only to the need to continue the discussions, and they could not agree to the proposed conclusions. There were no conclusions, in the absence of a consensus.

59. The Chairman stated that there appeared to be a consensus on continuing the dialogue, and on the need for a document for the Committee's next meeting.

60. The Workers recalled the points they had made to the effect that the document should deal with ways of strengthening the supervisory procedure, including the options laid down in the present paper and subject to the constitutional interpretation contained therein.

61. The representative of the Government of Germany recalled that the Office's support was needed to explore all the possible avenues. The representative of the Government of Finland suggested that the Committee could move forward on the basis of paragraph 7 of the proposed conclusions, if in the second line the following were added: "including the proposed measures considered so far".
62. The Employers considered that dwelling exclusively on paragraph 7 would leave out all the rest of the discussion, including the statement made by Mr. Noakes.

63. The Chairman noted that he had offered only provisional draft conclusions which attempted to summarize the discussion. There was a consensus that there should in future be a mechanism that was in line with the Constitution, and that the Office should produce a paper for the next session containing the various options suggested so far to allow the Committee to continue its deliberations. The Employers and Workers agreed on this.

64. The Employers stated that the consideration should not extend only to mechanisms: it should go beyond this to all the possibilities offered within the Constitution.

65. The Workers reiterated that they had been speaking only of the future work of the Committee. A document such as that proposed by the Chairman (i.e. the draft conclusions) needed the consensus of the groups, which did not exist.

66. The representative of the Government of the United States agreed on the need for a document for the Committee's next meeting. While she liked the formulation just put forward by the Chairman, perhaps the words "supervisory system" should be used instead of "mechanism", to cover all the options offered.

67. The Employers considered that it was not just a question of a mechanism: the Committee was also speaking of promotion, a wider concept than supervision. If this were omitted, it would deprive the ILO of the means it needed in this respect.

68. The Workers asked the Employers whether this last statement meant that they were now no longer ready to discuss the strengthening of the supervisory system. What the representative of the Government of the United States had proposed was in accordance with the present title of the item on the agenda.

69. The Employers stated that they were basing their proposal on the Constitution, the fundamental principles of the ILO, and the Declaration of Philadelphia. There had to be harmony between supervision and promotion, and the present discussion could not be limited to the supervisory system. Their position should be reflected in the minutes.

70. The Workers took it that this meant that the Employers had replied in the negative to their question. The Employers did not accept this interference or interpretation of their own views and confirmed their acceptance of the Chairman's proposals with the amendment they had suggested.

71. The Chairman suggested the following. There was a consensus on the need to develop the supervisory system and on the promotion of fundamental rights in accordance with the Constitution. The Office should be asked to prepare a first paper for the next meeting outlining the different alternatives which had been proposed so far, and the discussion would continue in March 1997.
72. The representative of the Government of the Russian Federation suggested replacing "first" by "further". He was supported by the representative of the Government of the Islamic Republic of Iran, who noted that this would actually be the fourth paper. Would the proposal also include taking into account the discussions which had taken place in the Committee? The Chairman replied in the affirmative.

73. The Workers suggested that the word "develop" be replaced by "strengthen", and that the word "Conventions" be added after "fundamental rights". The Employers agreed to the first part of the proposal, but not to the second. The Workers could not proceed without a reference to the Conventions being added.

74. The representative of the Government of the United States suggested "promotion of fundamental rights and Conventions", and the representative of the Government of the Russian Federation proposed that the reference be to the fundamental ILO Conventions. The Workers agreed to the latter, on the understanding that this would cover the seven Conventions referred to in the final Declaration of the Social Summit. The Employers proposed "fundamental rights as expressed in the Constitution and the core Conventions", but the Workers did not accept this formulation.

75. The Employers stated that they had tried in their last proposal to pick up all the points made in the discussion, so they could not agree with the Workers. The Workers stated that they wanted the Employers to agree that the discussion concerned the seven fundamental ILO Conventions, and could not see any problem in doing so: did the Employers agree or not? The representative of the Government of the United States suggested referring to the promotion of fundamental human rights standards, which encompassed both the Constitution and the Conventions.

76. The Workers stated that they understood the efforts that were being made to find a formulation, but the Committee was speaking primarily of the supervisory system. Promotion of the fundamental human rights Conventions was being dealt with in another context. They supported the last proposal made by the Russian Federation. There could be no agreement if anyone disagreed with promoting the Conventions and the supervisory system.

77. The Employers proposed "promotion of the core Conventions and the fundamental rights expressed in those Conventions and the Constitution".

78. The Workers stated that the fact that there was no consensus should be acknowledged.

79. The representative of the Government of France suggested that the Committee should conclude that, after a broad exchange of views covering many points, the Committee had requested the Office to prepare a further paper for the next meeting in order to proceed with the discussions on this subject.

80. The Chairman noted that this proposal was acceptable to all.
III. Review of the activities of the multidisciplinary teams in relation to standards

81. The Employer members noted the multidisciplinary teams' (MDTs') essential task of promoting the ILO's basic standards. They were concerned at the vacancies in the teams referred to in paragraphs 2 and 3 of the Office paper, and hoped the International Labour Standards Department (NORMES) would intensify its efforts to provide help, as mentioned in paragraph 5. The Office's structure needed to be duly reinforced in order to deal with the problems arising in the field, especially in the context of country objectives: NORMES assistance was particularly useful as headquarters was able to understand the global nature of the issues arising and to act quickly. If the ILO as a whole did not act in these areas it would be overtaken by events. Adequately staffed MDTs had a vital role to play in this respect.

82. The Worker members said that, as in the case of previous documents of this type, it was very difficult to draw significant conclusions from the information provided. They repeated their view that all MDTs should have standards specialists. The Fifth European Regional Conference held in Warsaw in 1995 had particularly requested a standards specialist in the Budapest MDT in view of the absolute importance of labour standards to countries in transition. The present situation as regards standards specialists in the MDTs in general was unacceptable: there was no reason to keep existing posts vacant; the Committee should receive fresh information at its next meeting on progress made in this regard. They pointed out that standards were central to the Active Partnership Policy (APP). Without the necessary expertise in this area the APP could not function properly. They called for more concrete information on standards-related activities in future reports, particularly in respect of the promotion of the ratification and application of the fundamental human rights Conventions and those identified by the Working Party on Policy regarding the Revision of Standards, and assistance to member States to meet relevant constitutional obligations.

83. The representative of the Government of Brazil agreed that there ought to be a standards specialist in every MDT. She recorded the excellent work done by the competent official of the Santiago (Chile) team in her country, in part with the assistance of the Government of Spain, and the support received in relation to the Discrimination (Employment and Occupation) Convention (No.111): she supported paragraphs 22 and 23 of the document; the Santiago team should continue its activities in relation to standards and further information should be provided about them.

84. The representative of the Government of Japan also agreed with the statement by the Worker members on the content of future documents for the Committee on the subject. The Office should strengthen its standards-related activities by filling the field posts in question; standards specialists could then be the first in line for giving detailed advice. He noted that in the Asian region two out of three standards specialist posts were unfilled.

85. The representative of the Government of the Republic of Korea agreed with the document's conclusions and urged the ILO to find the budget to fill the vacancies. The representative of the Government of the United States was concerned at the number of MDTs without a standards specialist;
she also hoped the next document on the subject would provide further evaluation of the activities.

86. Mr. Ahmed (Worker member) drew attention especially to the vacancies in the Manila and New Delhi teams: he urged the Office to fill those vacancies and to be more responsive to the needs of the workers. The representative of the Arab Labour Organization praised the excellent work done by the ILO, including that in cooperation with his organization, to improve understanding of labour standards in Arab countries. The absence of standards specialists in the Beirut and Cairo MDTs left a serious vacuum which other members of the teams could not fill.

87. The Chairman noted that the Committee's report would include the views expressed. The Committee hoped that greater efforts would be made to meet the needs and especially to fill vacant posts.

IV. Choice of Conventions on which reports should be requested in 1998 and 1999 under article 19 of the Constitution

88. The Committee was called upon to make proposals as to the choice of Conventions and Recommendations on which governments might be invited to submit reports under article 19, paragraphs 5(e), 6(d) and 7(b), of the Constitution.

89. The Employer members and the Worker members agreed that reports should be requested in 1998 on the Migration for Employment Convention (Revised), 1949 (No. 97), and Migration for Employment Recommendation (Revised), 1949 (No. 86), and on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and Migrant Workers Recommendation, 1975 (No. 151), and in 1999 on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

90. The representative of the United States Government seconded the Employer and Worker members' proposal for 1998 and suggested that, for 1999, reports might be requested on the Conventions concerning night work and hours of work, as recommended by the Working Party on Policy regarding the Revision of Standards. Though they appreciated the appropriateness of the proposals made by the Working Party, the Employer and Worker members maintained their proposal in the belief that the standards on tripartite consultation were of more immediate importance.

91. The Committee recommends that the Governing Body invite governments to submit reports under article 19 of the Constitution on the following instruments:

   in 1998:
   the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151);
in 1999:
the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and

V. Forms for reports under articles 19 and 22
of the Constitution

(a) Forms for reports on the application of ratified Conventions
(article 22 of the Constitution): Home Work Convention, 1996 (No. 177)

92. The Committee was called upon to consider the draft form to be used as the basis for the reports that
States having ratified the Convention will be required to submit under article 22 of the Constitution.

93. With regard to the questions relating to Article 1, the representative of the United States proposed
that a reference be added to national legislative provisions and court decisions defining the concept of
intermediary. After hearing the explanations given by a representative of the Director-General, the
representative of the Mexican Government seconded the previous speaker and requested that the word
"homeworker" also be added.

94. As regards Article 5, the Worker members proposed that a sentence be added requesting that the
relevant texts be communicated to the Office. They also proposed that the question on Article 7 refer to
the types of work and substances prohibited.

95. The representative of the United States Government, seconded by the representatives of the German
and Mexican Governments, proposed that the question on Article 8 be amended to make it clearer that
national laws and regulations or court decisions should establish the respective responsibilities of
employers and intermediaries only in so far as the latter are recognized by legislation or tolerated in
practice.

96. The Employer members said that, where the form refers to the criteria that determine whether a
worker is independent or autonomous, it must be quite clear that this depends on the situation in each
country, as in many cases the distinction is so fine that court decisions may come down on one side or
the other.

97. With respect to Article 9, the representative of the German Government pointed out a typographical
error in all three versions and proposed that the second sentence of the first question be amended to
make it clearer that detailed information is required only if the inspection system differs from the labour
inspection prescribed under Convention No. 81. He was seconded by the representative of the Mexican
Government.
98. The Committee recommends that the Governing Body approve the report form for the Home Work Convention, 1996 (No. 177), as it appears in Appendix II to this report.

(b) Report forms for unratified Conventions (article 19 of the Constitution): Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105)

99. In accordance with the Governing Body's decision at its 265th Session and with established practice, the Committee was called upon to consider the report forms to be used as a basis for the reports on Conventions that member States will be invited to submit on its recommendation.

100. With respect to the report form for Convention No. 29, the Worker members proposed that the references to "penal and labour legislation" be deleted and replaced by a reference to national legislation. After hearing a representative of the Director-General, the representative of the Mexican Government proposed that the text refer to "national legislation, in particular penal legislation".

101. The representative of the United States Government, seconded by the Worker members, proposed that the questionnaire include a question concerning penal sanctions imposed on the illegal exaction of force or compulsory labour.

102. Concerning the report form on Convention No. 105, the Employer members proposed that point (d) requesting information on the right to strike in the public service and essential services be deleted. A representative of the Director-General recalled that sanctions for participating in a strike were mentioned in the Convention; he read out the corresponding question in the report form under article 22, previously adopted by the Governing Body, and suggested that it be suitably adapted and inserted in the questionnaire. The suggestion was accepted by the Employer member.

103. The Committee recommends that the Governing Body approve the report forms for the Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105), as they appear in Appendix II to this report.

VI. Other questions

UNESCO draft Recommendation concerning the Status of Higher Education Teaching Personnel

104. The Committee examined a document that did not call for any decision.

105. The Employer members and Worker members said that they were waiting for the text of the draft Recommendation, which according to paragraph 4 of the document would be communicated to the
Committee at the Governing Body’s 268th Session, before commenting on the results obtained. The Worker members stressed the importance that their group attached to the content of the instrument and to the supervisory procedures, on which the Governing Body had previously expressed its views. (10)

106. The Committee took note of the document and of the discussion.

International Labour Conference:
Report III (Parts 1, 2 and 3) -- Summaries of reports
(articles 19, 22 and 35 of the Constitution)

107. The Committee was called upon to give its opinion on the proposals to rationalize the presentation of the summaries of reports under articles 19, 22 and 35 of the Constitution and to effect savings by discontinuing the separate publication of the summaries.

108. The Committee adopted without discussion the suggestions made in paragraph 11 of the document. It recommends that the Governing Body approve the changes that would make the separate publication of Report III (Parts 1, 2 and 3) unnecessary, along the lines set out in paragraph 11 of the document submitted to it. (11)


Points for decision:

Paragraph 8;
Paragraph 14;
Paragraph 91;
Paragraph 98;
Paragraph 103;
Paragraph 108.

1 GB.267/LILS/4/1; GB.267/LILS/4/2.

2 This title is required to meet the requirements of article 46(2) of the Standing Orders of the Conference, which provides that, "when including any proposal for the amendment of the Constitution in the agenda the Governing Body or the Conference, as the case may be, shall define exactly the question or questions which it includes in the agenda of the Conference".

3 GB.267/LILS/4/2, as amended and appended to the present report as GB.267/LILS/4/2(Rev.).
(a) The contents of Part 1 of Report III will be published in a simplified form as an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations; (b) Part 3 of Report III will be published as an appendix to the report of the Committee of Experts; (c) the Office will make available for consultation the texts of all reports received under articles 19, 22 and 35 of the Constitution, and will supply copies of these reports on request to members of delegations; (d) the reports of the Committee of Experts will be renumbered accordingly.

Appendix I

Proposed texts

1. Constitution

Article 19(9)
(new)

9. By a majority of two-thirds of the votes of delegates present, the Conference may, acting on a proposal of the Governing Body, abrogate any Convention adopted in accordance with the provisions of this article if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization.
2. Standing Orders of the Governing Body

Article 12bis

Procedure concerning the placing on the Conference agenda of the abrogation of a Convention in force or the withdrawal of a Convention which has not entered into force or of a Recommendation (new)

1. When an item to be placed on the agenda of the Conference concerns the abrogation of a Convention in force or the withdrawal of a Convention which has not entered into force or of a Recommendation, the Office will place before the Governing Body a report containing all relevant information which the Office possesses on this subject.

2. The provisions of article 18 concerning the fixing of the Conference agenda shall not apply to the decision to place on the agenda of a given session of the Conference an item on such an abrogation or withdrawal. Such a decision should as far as possible be reached by consensus (or, if such a consensus cannot be reached in two successive sessions of the Governing Body, by a four-fifths majority of Members of the Governing Body with a right to vote during the second of these sessions).

3. Standing Orders of the Conference

Article 11

(Text to be added to the present Article 11 is in bold print)

1. The procedure for examining proposed Conventions or Recommendations, as well as the procedure for the abrogation or withdrawal of such an instrument adopted by the Conference, shall be regulated by the rules of procedure concerning Conventions and Recommendations which appear in section E of part II.

Article 45bis

Procedure to be followed in the event of the abrogation or withdrawal of Conventions and Recommendations (new)
1. When an item to be placed on the agenda of the Conference concerns the abrogation of a Convention in force or the withdrawal of a Convention which is not in force or of a Recommendation, the Office shall place before the Governing Body a report containing all relevant information which the Office possesses on this subject.

2. When an item on abrogation or withdrawal is placed on the agenda of the Conference, the Office shall communicate to all governments, so that it reaches them 18 months before the session of the Conference, a short report and questionnaire requesting them to indicate within a period of 12 months their position, along with the reasons therefor, on the subject of the said abrogation or withdrawal, along with the relevant information. This questionnaire shall request governments to consult the most representative employers' and workers' organizations before preparing their final replies. On the basis of the replies received, the Office shall draw up a report containing a final proposal which shall be distributed to governments four months before the session of the Conference.

3. The Conference may decide to examine this report and the proposal which it contains directly in a plenary sitting or send it to the Selection Committee. At the end of this examination in the plenary or in the light of the report of the Selection Committee, as appropriate, the Conference shall decide by consensus or, failing that, by a preliminary vote by a two-thirds majority to submit the formal proposal for the abrogation or withdrawal of the instrument to a final vote. This record final vote shall take place no earlier than the day following the preliminary decision.

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**Appendix II**

Appl.19.C.29
Forced Labour Convention, 1930

INTERNATIONAL LABOUR OFFICE

REPORTS ON UNRATIFIED CONVENTIONS

(Article 19 of the Constitution of the International Labour Organization)

REPORT FORM FOR THE FORCED LABOUR CONVENTION, 1930 (No. 29)

GENEVA
1996
Report

to be made no later than 30 April 1997, in accordance with article 19 of the Constitution of the
International Labour Organization by the Government of: ............................ on the

Forced Labour Convention, 1930 (No. 29)\(^{(12)}\)

adopted by the International Labour Conference at its 14th Session.

I. Please give a general indication on the extent to which the Convention is given effect in your
country in law and practice.
   a. In particular, indicate any provisions of the national Constitution and legislation, in
      particular penal legislation prohibiting the exaction of forced or compulsory labour.
   b. Please also supply copies of national legislation governing compulsory military service,
      normal civic obligations, penal and prison labour, work or service exacted in cases of
      emergency, and minor communal services.
   c. Please indicate any limitations on the freedom of workers, in particular in the service of
      the State and essential services, to leave their employment by giving notice of reasonable
      length.
   d. Please indicate the penal sanctions imposed on the illegal exaction of forced or
      compulsory labour.

II. Please specify which authority or authorities are entrusted with the enforcement of the legislation
    mentioned under I(a), and indicate any action taken in practice.

III.  
   a. Please indicate any difficulties presented by the Convention, in legislation or national
      practice, or any other reasons which prevent or delay the ratification of the Convention,
      and any measures taken or envisaged to overcome these obstacles.
   b. Please indicate whether ratification of the Convention is envisaged and, if so, how soon.

IV. Please indicate the representative organizations of employers and workers to which copies of the
    present report have been communicated in accordance with article 23, paragraph 2, of the
    Constitution of the International Labour Organization.

V. Please indicate whether you have received from organizations of employers or workers any
   observations on the effect given or to be given to the Convention.
INTERNATIONAL LABOUR OFFICE

REPORTS ON UNRATIFIED CONVENTIONS

(Article 19 of the Constitution of the
International Labour Organization)

REPORT FORM FOR THE ABOLITION
OF FORCED LABOUR CONVENTION, 1957 (No. 105)

GENEVA
1996

Report
to be made no later than 30 April 1997, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of: ......................... on the

Abolition of Forced Labour Convention, 1957 (No. 105)\(^{(13)}\)

adopted by the International Labour Conference at its 40th Session.

I. Please give a general indication on the extent to which the Convention is given effect in your country in law and practice, and include copies of the national legislation governing the following matters:
   a. rights and freedoms of expression, assembly and association, including any provisions of penal and police law limiting these rights and freedoms that are enforceable with penal sanctions involving penal labour or deprivation of liberty, as well as the legislation governing the performance of penal or prison labour and any provisions exempting specific categories of convicted prisoners from the obligation to perform prison labour;
   b. national service obligations;
   c. labour discipline, including specific provisions governing public servants, essential services and seafarers;
   d. participation in a strike, or in certain strikes, punishable by the exaction of forced or compulsory labour,
   e. any provisions of administrative or penal law involving an obligation to perform work or service, or enforceable with sanctions involving such an obligation, that establish a

\(^{(13)}\) Number indicates the article of the Constitution of the International Labour Organization under which the Convention is reported on and which it is the responsibility of the Government to implement.
distinction on the basis of racial, social, national or religious criteria.

II. --

a. Please indicate any difficulties presented by the Convention, in legislation or national practice, or any other reasons which prevent or delay the ratification of the Convention and any measures taken or envisaged to overcome these obstacles.

b. Please indicate whether ratification of the Convention is envisaged and, if so, how soon.

III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.

IV. Please indicate whether you have received from organizations of employers or workers any observations on the effect given or to be given to the Convention.

International Labour Office

Report form for the Home Work Convention, 1996 (No. 177)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."

* * *

The Government may deem it useful to consult the appended text of the Home Work Recommendation, 1996 (No. 184), the provisions of which supplement the Convention and can contribute to a better understanding of its requirements and facilitate its application.

Practical guidance for drawing up reports

First reports

If this is your Government's first report following the entry into force of the Convention in your country,
full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

Subsequent reports

In subsequent reports, information need normally be given only:

a. on any new legislative or other measures affecting the application of the Convention;

b. in reply to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations;

c. in reply to comments by the supervisory bodies; the report must contain replies to any comments by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards regarding the application of the Convention in your country.

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Article 22 of the Constitution of the ILO

Report for the period ......................... to .........................
made by the Government of .....................................................

on the

Home Work Convention, 1996 (No. 177)
(ratification registered on .........................)

I. I. Please give a list of the laws and regulations, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of these texts to the International Labour Office.

Please give any available information concerning the extent to which these laws and regulations have been enacted or modified to permit, or as a result of, ratification.

II. II. Please indicate in detail for each of the following Articles of the Convention the provisions of the above-mentioned laws and regulations, etc., or other measures, which give effect to each Article.

If in your country ratification of the Convention gives the force of national law to its provisions, please indicate by virtue of what constitutional texts the ratification has had this effect. Please also specify what action has been taken to implement those provisions of the Convention which require the competent authority or authorities to take action, such as a definition of its exact scope and the institution of
indispensable practical measures and procedures to apply it.

If the Committee of Experts or the Conference Committee on the Application of Standards has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

**Article 1**

For the purposes of this Convention:

a. the term "home work" means work carried out by a person, to be referred to as a homeworker;
   i. in his or her home or in other premises of his or her choice, other than the workplace of the employer;
   ii. for remuneration;
   iii. which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

   unless this person has the degree of autonomy and the economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

b. persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

c. the term "employer" means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

Please indicate, where necessary, the provisions of national laws or court decisions establishing the status of homeworker, independent worker and intermediary.

**Article 2**

This Convention applies to all persons carrying out home work within the meaning of Article 1.

**Article 3**

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.
Please explain briefly the policy and methods adopted to improve the situation of homeworkers.

Please indicate the employers' and workers' organizations which have been consulted.

Article 4

1. The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage-earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

2. Equality of treatment shall be promoted, in particular, in relation to:

   a. the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
   b. protection against discrimination in employment and occupation;
   c. protection in the field of occupational safety and health;
   d. remuneration;
   e. statutory social security protection;
   f. access to training;
   g. minimum age for admission to employment or work; and
   h. maternity protection.

Please indicate the measures taken to promote equality of treatment between homeworkers and other employees in the eight areas provided for in this paragraph.

Article 5

The national policy on home work shall be implemented by means of laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice.

Please specify by what means the implementation of the provisions of the Convention is guaranteed, and communicate the relevant text.

Article 6

Appropriate measures shall be taken so that labour statistics include, to the extent possible, home work.

Please indicate the measures taken to apply this provision.

Article 7
National laws and regulations on safety and health at work shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.

Please indicate the measures taken to apply this provision, and the types of work and substances prohibited in home work.

Article 8

Where the use of intermediaries in home work is permitted, the respective responsibilities of employers and intermediaries shall be determined by laws and regulations or by court decisions, in accordance with national practice.

Where intermediaries are recognized by legislation or tolerated in practice, please communicate the laws or regulations or court decisions establishing the respective responsibilities of employers and intermediaries.

Article 9

1. A system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to home work.

2. Adequate remedies, including penalties where appropriate, in case of violation of these laws and regulations shall be provided for and effectively applied.

   1. Please indicate the system of inspection for ensuring compliance with the laws applicable to home work. Please communicate detailed information on the organization and operation of the inspection system, if the system differs from the labour inspection prescribed under Convention No. 81.

   2. Please indicate the measures taken to give effect to this provision.

Article 10

The Convention does not affect more favourable provisions applicable to homeworkers under other international labour Conventions.

III. Please state to what authority or authorities the application of the above-mentioned legislation, regulations, etc. is entrusted, and by what methods such application is supervised.

IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.
V. Please give a general appreciation of the manner in which the Convention is applied in your country and supply -- in so far as the information in question has not already been supplied in connection with other questions in this form -- extracts from inspection reports and, where such statistics exist, information on the number of workers covered by the measures giving effect to the Convention, the number and nature of infringements reported, etc.

VI. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization. If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explains the procedure followed.

VII. Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

Home Work Recommendation, 1996 (No. 184)

[Text not reproduced here.]

12 The text of the Convention will be appended to the report.

13 The text of the Convention will be appended to the report.

14 Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organizations recognized for the purpose of Article 3, copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."

Appendix III

GB.267/LILS/4/2 (Rev.)

Report of the Working Party on Policy regarding the Revision of Standards
Part II Conventions in need of revision (Phase 2)


For further information, please contact the Official Relations Branch at Tel: +41.22.799.7732, Fax: +41.22.799.8944 or by e-mail: RELOFF@ilo.org

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