EIGHTH ITEM ON THE AGENDA

Reports of the Committee on Legal Issues and International Labour Standards

Second report: International labour standards and human rights

Contents

I. Report of the Working Party on Policy regarding the Revision of Standards
II. Standard-setting policy: the ratification and promotion of fundamental ILO Conventions
III. Review of the activities of the multidisciplinary teams in relation to standards
IV. Choice of Conventions and Recommendations on which reports should be requested in 2000 and 2001 under article 19 of the Constitution
V. Special reports on unratified Conventions (article 19 of the Constitution)
VI. UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel
VII. Other questions


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

I. The Committee had before it the Report of the Working Party on Policy regarding the Revision of Standards which dealt with four questions: the effect given to the recommendations of the Working Party; the deferred examination of Conventions Nos. 94 and 96; the examination of the needs for
revision of Conventions concerning seafarers and fishermen;\(^{(3)}\) and the examination of the need for revision of Recommendations (first stage).\(^{(4)}\)

2. The representative of the Government of France, Chairperson of the Working Party, presented the results of the Working Party's work. On the first question, he said that the information note provided by the Office reviewed the progress made and the decisions taken by the Governing Body in this connection. The fact that it was regularly updated made it particularly useful. In view of the deferred examination of Conventions Nos. 94 and 96, there only remained three non-maritime Conventions for the Working Party to study, each of which would be briefly studied by an expert. It was expected that the results of these studies would be submitted to the Working Party at its November 1999 session. Regarding the examination of the maritime Conventions, the criteria and methodology selected were the same as those used for the non-maritime Conventions. Given the nature of these standards, representatives of the Joint Maritime Commission had been unofficially consulted for their technical views. The Working Party had found that the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and related instruments raised complex issues which required more in-depth consideration. It had therefore decided to postpone the examination of these Conventions until its March 1999 session. Recommendations were a new subject for the Working Party and one which had so far been little explored. The Working Party had discussed at length the methodology put forward in the Office document, which it had approved. It could proceed with the examination of individual Recommendations at its next meeting. To conclude, the Chairperson of the Working Party warmly thanked the members of the Working Party, and in particular the spokespersons of the two groups, and congratulated the secretariat on the quality of its work.

3. The Employer members declared that for the most part they shared the opinions expressed by the Chairperson. The Working Party had progressed in its work. Nevertheless, while aware of the complexity of some of the issues raised, they wished to see more rapid results. The examination of obsolete Conventions was important and the Working Party should continue its work at a steady pace. Furthermore, while appreciating the quality of the Office's work and the complexity of the issues raised, they stressed the need to receive the documents early enough to allow consultations to be held before the meeting of the Working Party. They also recalled the importance of the ratification of up-to-date Conventions and of the denunciation of obsolete Conventions and appealed to member States to follow up the Governing Body's decisions in this regard. The distribution of the information note was particularly useful for the Conference Committee on the Application of Standards, and information on the policy regarding the revision of standards should be more widely circulated. Regarding fundamental Conventions, the Employer members indicated that no Convention was entirely immutable. If need be, it should be possible to review these Conventions, without changing their principles. A certain balance should be achieved in this matter. As for the Conventions relating to fishermen, they stressed the need to carry out unofficial consultations with organizations in the sector concerned. Lastly, they supported the methodology the Office had proposed for Recommendations, and underlined the fact that the examination would be hard work. They requested the Office to earmark the resources necessary to prepare properly, and thus facilitate, the Working Party's work.
4. The Worker members expressed their satisfaction at the results achieved by the Working Party. It had managed to establish the credibility of the process of the revision of standards, in spite of the doubts voiced at the outset. Nevertheless, they recalled that this process went hand in hand with the adoption of new standards and the promotion of existing ones. In the framework of the Working Party the Worker members had demonstrated their readiness to examine the situation of obsolete Conventions which could even be abrogated once the constitutional amendment had come into force. The focus must however be on the positive, namely the promotion of up-to-date Conventions. The objective was to ensure those Conventions were ratified. Concerning the remark made by the Employer members about the re-examination of fundamental Conventions, the Worker members indicated that the number of ratifications of these Conventions, which included the Minimum Age Convention, 1973 (No. 138), demonstrated their immutability. These Conventions were sufficiently flexible for the member States to be able to ratify them, even if such ratification would in certain cases require amendments to national legislation. Lastly, the Worker members stated that the only negative point was the late arrival of the documents and that it was important to have sufficient time to examine them before the Working Party's meeting.

5. The representative of the Government of Mexico also expressed the wish for the documents to be available early enough to allow consultations to be held at the national level. He hoped that the Working Party would continue to work efficiently and quickly and emphasized the need to ensure that its recommendations were implemented.

6. The Chairperson thanked both the members of the Working Party and the Office for their work. It was imperative to pursue the work that had been undertaken, notably the examination of Recommendations, given the vital importance of the Working Party's activities for the whole of the ILO's standard-setting system.

7. The Committee recommends that the Governing Body:

(a) take note of the report of the Working Party on Policy regarding the Revision of Standards, and of the opinions expressed during the meeting of the Committee;

(b) approve the proposals in the corresponding paragraphs of the report, on which the Working Party and the Committee have reached consensus.

***

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

8. The Committee had before it a document on technical assistance provided by the ILO in connection with the ratification and promotion of fundamental ILO Conventions, following the discussions which
took place at the 270th Session (November 1997) of the Governing Body on the effect of assistance provided in this respect.\(^{(6)}\)

9. A representative of the Director-General (Chief of the Equality and Human Rights Coordination Branch, of the International Labour Standards Department) introduced and updated the information contained in the document. He apologized for the accidental omission of the usual footnote concerning Yugoslavia in the table. This would be corrected. He informed the Committee that since the document had been drafted, Oman had ratified Convention No. 29, and the United Arab Emirates had ratified Convention No. 138. Through the recent ratification by Turkey of Conventions Nos. 29 and 138, and Convention No. 138 by Portugal, these countries had now joined those that had ratified all seven fundamental ILO Conventions. The ILO had now registered 99 ratifications of fundamental Conventions since the launch of the ratification campaign, which constituted 23 per cent of the total number of unratified fundamental Conventions at the time of its launch.

10. The Employer members observed that the document dealt with an issue of continuing interest. Caution was required with regard to mixing the objectives of the ratification campaign and those of the ILO Declaration on Fundamental Principles and Rights At Work. Noting that the obstacles to ratification identified in the previous document remained, they referred to Convention No. 138 which constituted one element of protection against child labour, and expressed the hope that the Conference discussion on a new instrument on the worst forms of child labour would result in the adoption of an instrument that reflected a more comprehensive vision of the issue. The Employer members expressed their satisfaction with the complementarity between the assistance provided with regard to promoting the ratification and application of the fundamental Conventions, both in terms of quantity and quality. They requested the Office to clarify the statement in the document that, although the assistance provided by the Office was aimed primarily at fulfilling the objective of the campaign -- ensuring universal ratification of all seven fundamental Conventions -- it also helped achieve the underlying objective of the campaign, which was universal and effective application of those Conventions. They congratulated the Office on the success of the campaign and considered the document satisfactory, especially the concluding section.

11. The Worker members stated that the results of the ratification campaign were quite good and expressed their full satisfaction with the ratification rate. They encouraged the Office to continue its efforts in this respect. They emphasized the importance of the statement in the document that it should be recalled that the technical assistance the ILO provided in respect of standards was not limited solely to unratified fundamental Conventions, but in fact extended to all international labour standards, and suggested that the Office draw on the lessons learned from the ratification campaign to promote ratification of other Conventions, particularly the priority Conventions. The eloquent examples provided showed that the ILO should use all the means at its disposal to continue its efforts. When the Office referred to the application of a Convention before it was ratified, it was their understanding that the aim was to create the conditions, through the elimination of all obstacles and difficulties, for the ratification of the Convention, not to encourage its application without justification. Ratification was the essential objective of the campaign, as this allowed international supervision to be carried out. Their experience
had shown that where tripartite discussions had been held concerning ratification, the results had been more interesting, and in this respect the MDTs were in a good position to assist the social partners in encouraging governments to ratify Conventions. Consensus on the ratification of a Convention should not become an additional criterion before ratification could be achieved, as the adoption of a Convention was already the product of tripartite agreement at the international level. The ratification campaign should be strengthened, and the efforts of the ILO's field structure should be intensified in this respect. A further paper should be provided to the Committee in November 1999.

12. The representative of the Government of Chile informed the Committee that the information contained in the document concerning his country was outdated, since the Senate of his country had recently approved the ratification of Conventions Nos. 87, 98, 105 and 138. He emphasized that the assistance provided by the ILO had been critical in this respect.

13. The representative of the Government of India stated that the steps taken to initiate the ratification campaign had proven warranted considering its success, on which he congratulated the Office. India had ratified Conventions Nos. 29, 100 and 111. Ratification of Convention No. 105 had been initiated, but ratification of Convention No. 138 remained difficult in view of the presence of 3.5 million unorganized workers in his country, and the federal system which meant that there was no single law on the age of entry into employment. This was being pursued with the state governments. Ratification of Conventions Nos. 87 and 98 was hampered by technical and procedural problems, as under the Constitution civil servants were entitled to certain guarantees (especially high job security) but did not have the right to strike; a recent High Court decision had upheld the use by the Government of a code of conduct in this respect. He assured the Committee of his country's willingness to continue to pursue the ratification of these Conventions and gave an overview of the assistance provided by the ILO in this respect.

14. The representative of the Government of Turkey stressed that the assistance provided by IPEC had been very helpful in creating the political environment in his country necessary for the ratification of Convention No. 138.

15. The representative of the Government of Panama said he was very satisfied with the clarity and precision of the Office paper, and congratulated the Government of Chile on its recent decision. His country was in the process of ratifying Convention No. 138, and he hoped for approval during the present session of Congress.

16. The representative of the Government of Canada welcomed the useful information in the document, especially to the table. Her Government continued to hold consultations with the Provincial Governments concerning the ratification of Convention No. 29, following the assistance and advice of the Office.

17. The representative of the Government of Brazil congratulated the Office on the document and informed the Committee that, although ratification of Conventions Nos. 87 and 138 was difficult in the light of Brazil's Constitution, Convention No. 138 was applied de facto in his country. Congress was
currently considering a constitutional amendment, the adoption of which would greatly facilitate the ratification of Convention No. 138, while the adoption of a constitutional amendment aimed at ending the trade union monopoly and compulsory trade union contributions would greatly facilitate the ratification of Convention No. 98.

18. The Committee took note of the Office paper.

***

III. Review of the activities of the multidisciplinary teams in relation to standards

19. The Employer members drew attention to the remaining vacant posts for standard specialists in the various multidisciplinary teams (MDTs). They supported the activities undertaken with regard to the promotion of fundamental Conventions but reiterated that other activities, such as the drafting of country objectives and labour market reform, were important too. Specialists should take into account the recommendations of the Working Party on Policy regarding the Revision of Standards, as it sometimes appeared that countries ratified outdated Conventions that had been superseded. The Working Party set trends that should be taken into account by MDTs. The world of work was progressing rapidly, and it would perhaps be beneficial to seek the guidance of countries that were more advanced in this respect. A dogmatic approach with regard to standards would lead to inflexibility and ultimately to the development of standards that could not be applied. The substance of standards should be translated into their applicability. The culture of tripartite consultation should also prevail in the MDTs as a necessary precondition in such times of rapid technical change. They requested clarification of the situation regarding Convention No. 138, noting that, without calling into question the terms used in the Declaration on Fundamental Principles and Rights at Work and the classification of the fundamental Conventions, there appeared to be some difficulty in this respect.

20. The Worker members welcomed the pertinent information contained in the document, which on the whole they considered satisfactory, although perhaps more information on Central and Eastern Europe, and the Arab States and Central Asia could have been included. Seven posts for standards experts remained vacant, and the discussion held in the Programme, Financial and Administrative Committee had a direct bearing on this situation. All the MDTs, including those for which no such post has been foreseen in the budget, should have a standards expert. It seems that in order to find qualified standards experts to fill these positions in the field, the Office needed to recruit candidates from both inside the house and outside, and then provide them with the training essential for them to carry out the work expected while providing them with the opportunity for further training after some work experience in the field. The competition should stipulate that the successful candidates would be required to work in the regions where needed, except for the periods of training. Finally, this should be a permanent process so that there were always people available to fill the vacancies which may occur from time to time.

21. Mr. Blondel (Worker, France) agreed that the question of mobility discussed in the Programme,
Financial and Administrative Committee had pointed to a shortage of technical experts. The International Labour Standards Department was at the backbone of the ILO's activities and needed competent staff that were aware of their responsibilities. Standards were of universal application, and the Office should produce proposals to ensure postings in all the regions. In spite of the political and budgetary problems that this would entail, the proposal to hire from outside and provide the required training, including regular updates, should be supported, regardless of cost. There was at the same time a need to avoid different interpretations of the ILO's universal standards in different regions, and this could be achieved by headquarters' playing its role.

22. The representative of the Government of Egypt noted that no progress had been made in filling the vacant posts of standards experts and that this situation affected the quality of the work of the MDTs. She considered that the practice of utilizing external expertise in MDTs was unsatisfactory and was unfair to the countries affected. All vacant posts, not just those of standards experts, should be filled by specialized and fully qualified officials. Women should receive training in standards and gender issues, and an appraisal should be undertaken of all expertise in the MDTs, and not only that on standards. She welcomed the activities undertaken to promote the ratification and application of standards.

23. The representative of the Government of India stated that the Active Partnership Policy was a well-perceived and well-executed initiative, and the MDTs were an important link between the ILO and its Members and between Members. The New Delhi MDT had initially experienced some difficulties in functioning fully, as it had not been possible to hire specialists from the region. He welcomed the appointment of the MDT Director in New Delhi, who would also serve as the Area Office Director. It was necessary to expose MDT personnel to training and encourage mobility within the region. An evaluation scheme, perhaps tripartite, was necessary to correct mistakes.

24. The representative of the Government of Panama pointed out that the document reflected the positive results of MDT activities in the Americas in the area of standards. MDTs should be continued to be provided with the strongest possible support.

25. The representative of the Government of Swaziland acknowledged the technical assistance provided to his country within the framework of the development of a Bill on industrial relations. While welcoming the activities undertaken to promote ratification of fundamental Conventions, he noted that only two country objective documents had been drafted recently in Africa. He wondered whether there was a link between the existence of a country objectives document and the provision of technical assistance by the ILO.

26. The representative of the Government of Namibia said emphasis should be placed by the ILO on the transfer of expertise, and proposed that a system of counterparts should be considered.

27. The representative of the Government of Côte d'Ivoire said that the document reflected the intensity of activities undertaken by the MDTs. The efforts made to make up for missing expertise in MDTs without standards experts reflected a practically universal need for expertise in this area, and the Office
should focus its efforts on solving this problem.

28. The representative of the Government of Croatia appreciated the emphasis placed on the ratification of fundamental Conventions. Members' constitutional obligations should not be neglected. In this respect she thanked the Office for providing assistance concerning the submission of adopted Conventions to the competent national authority and the ratification of Convention No. 147. With regard to the latter, she stated that assistance requested from the Office for the preparation of the difficult first report under that Convention had inexplicably been postponed, and this had created great difficulty for Croatia in transmitting the report on time. An evaluation must take into account not only what had been done, but also what had not been done and why.

29. The Director of the International Labour Standards Department shared the concerns and irritations expressed by the Committee. He explained that, having taken into account the workload faced by the Department with regard to the Article 22 procedure, especially on maritime questions, the Department had had to take a decision on priorities, which had meant that Croatia had had to be informed that it could not be provided with the requested assistance but that, naturally, the Committee of Experts would be informed of these circumstances. With regard to the recommendations of the Working Party on Policy regarding the Revision of Standards, all the MDTs were provided with its reports, and this issue had also been discussed at a meeting of all MDT standards specialists held at headquarters in 1997, which would be repeated in 1999. The classification of Convention No. 138 as fundamental reflected the conclusions of the World Summit for Social Development. He expressed the hope and belief that the new Convention on the worst forms of child labour would be accorded the same classification and attention. Furthermore, an improvement in filling the vacant posts of standards specialists had been brought about over the last two years, and further progress was expected, especially in Africa. Referring to the document submitted to the Programme, Financial and Administrative Committee concerning staff mobility, he pointed out that staff of the International Labour Standards Department compared well when it came to taking up field posts. The Department would continue to do its best to have vacant posts filled.

30. The Committee took note of the Office paper.

* * *

IV. Choice of Conventions on which reports should be requested in 2000 and 2001 under article 19 of the Constitution

31. The Committee was called upon to make proposals on the choice of Conventions and Recommendations on which governments would be invited to submit reports in 2000 and 2001 under article 19, paragraphs 5(3), 6(d) and 7(b) of the Constitution.

32. The Employer and Worker members agreed that reports should be requested in 2000 on the Night
33. The representative of the Government of Germany recalled that the procedure had originally been instituted to give States the possibility to consider if enough progress had been made to allow them to ratify the Convention in question. However, the function had changed and States were now asked to give information on the need to revise these instruments. After discussions in which some governments expressed their preference for the Conventions on hours of work, it was decided to support the choice proposed by the Employers and Workers.

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

- in 2000: Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), and the Night Work (Women) Convention (Revised), 1948 (No. 89) and Protocol, 1990;

* * *

V. Special reports on unratified Conventions
(article 19 of the Constitution)

35. A representative of the Director-General informed the Committee that the document before the Committee indicated that, following the adoption of the Declaration by the Conference in 1998, the Director-General had decided, in the expectation that the "mini-surveys" resulting from the reports would be subsumed in the follow-up on the Declaration, not to dispatch the request for reports on Conventions Nos. 100 and 111 or the report form approved by the Governing Body at its 271st Session (March 1998). This was naturally subject to the Governing Body's decision concerning follow-up action on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

36. The Committee took note of the Office paper, subject to the reservations stated.

* * *

VI. UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997

37. The Committee had before it a paper summarizing the action taken with regard to monitoring of
the UNESCO Recommendation since its adoption by the General Conference of UNESCO in November 1997. The paper noted that the Office had agreed with UNESCO to defer consideration of the eventual extension of the mandate of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) to include its monitoring of the new instrument, as previously requested by the Governing Body, until after the World Conference on Higher Education organized by UNESCO in October 1998.

38. The Worker members expressed their surprise at this statement, especially as the decision of the UNESCO Executive Board taken in May 1998 to authorize consultations by the Director-General of UNESCO with the Director-General of the ILO did not itself refer to the World Conference. There seemed to be an attempt to slow down the process and a lack of good will on this question within UNESCO. Strict deadlines for examination of the question should be fixed and observed. They requested a re-examination of this question at the next meeting of the Committee during the 274th Session (March 1999) of the Governing Body, at which time it was expected that progress would have been made in consultations between the ILO and UNESCO.

39. The Employer members referred to their comments made in the previous discussion on this item at the 271st Session (March 1998). They supported the proposal to discuss the item again at the March 1999 session of the Governing Body.

40. The Chairperson took it that there was a consensus to take up this matter again at the next meeting of the Committee in March 1999.

* * *

VII. Other questions

41. The representative of the Arab Labour Organization informed the Committee that the tripartite Arab group of the Governing Body was considering the submission to the plenary of the Governing Body of a draft procedural decision during the present session, in accordance with article 15 of the Standing Orders, for the inclusion of an item on the agenda of the next session of the Governing Body. This would concern the way in which the Director-General's annual report on the situation of workers of the occupied Arab territories would be dealt with at the International Labour Conference in June 1999.

42. The Committee took note of this statement.


(Signed) J. Ilabaca, Chairperson.
Points for decision:

Paragraph 7;
Paragraph 34.

1. GB.273/LILS/WP/PRS/1.
2. GB.273/LILS/WP/PRS/2.
4. GB.273/LILS/WP/PRS/3.
6. GB.270/9/2, paras. 24-56.
7. GB.273/LILS/6.

Updated by VC. Approved by RH. Last update: 26 January 2000.

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

International Labour Conference: [Home]