SECOND ITEM ON THE AGENDA

Methods of revision: Preliminary discussion

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I. Introduction

1. The need to make provision for measures to permit the periodic revision of Conventions has been felt since the First Session of the International Labour Conference. In fact Article 21 of the Hours of Work (Industry) Convention, 1919 (No. 1) stipulates that: "At least once in ten years the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification." Of the many in-depth discussions that have taken place on this subject, both within the Conference and the Governing Body, mention should be made of the discussions held in 1928 and 1929 which led to the inclusion of a specific revision procedure in the Standing Orders of the Conference; those that led to the 1946 constitutional amendments; the discussions held in 1963 and 1964 concerning the Report of the Director-General to the Conference in 1963, which led to a proposal for a simplified revision procedure, approved by the Governing Body in 1965; those involving the in-depth review of international labour standards in 1974, which was used as the basis for the activities of the (Ventejol) Working Party of the Governing Body from 1976 to 1979; the discussions held following the Report of the Director-General to the Conference in 1974 -- the impetus for the idea of leaving certain instruments dormant -- which culminated in 1987 with the publication of the report of the second Ventejol Working Party; those concerning the Report of the Director-General to the Conference in 1994, following which the Working Party on Policy regarding the Revision of Standards was set up, and which led to the adoption of the Constitution of the International Labour Organization Instrument of Amendment, 1997, to permit the abrogation of obsolete Conventions by the Conference; discussions relating to the Report of the Director-General to the Conference in 1997; and lastly those prompted by the Report of the Director-General to the Conference in 1999.

2. The objectives of revision, as identified during the discussions which followed the Report of the Director-General to the Conference in 1994, are: to update standards, to facilitate the ratification of Conventions and to increase the consistency of the standard-setting system. The first task given in 1995 to the present Working Party was to assess the current revision needs for the Organization's Conventions and Recommendations. The Working Party is now about to complete that task. It has formulated revision proposals concerning 13 Conventions and has recommended a number of additional measures which are summarized in the Information note on the progress of work and decisions taken regarding the revision of standards.

3. The Report of the Director-General to the Conference in 1999 underlined the need to accelerate the
revision of outdated instruments in order to build on progress already made and to promote priority standards. (6) However, the procedure that has been used for revisions since the beginning of the 1960s will not be conducive to achieving this aim. With a few exceptions, revisions have been undertaken according to the general procedure used for the adoption of new standards, namely the double-discussion procedure provided in article 39 of the Standing Orders of the Conference. In the majority of cases the revision of one Convention has resulted in the adoption of another, with the consequent overlapping of instruments on the same subject, a situation that has frequently been deplored. (7)

4. Not all revisions undertaken by the Organization are, however, of the same scope or breadth. In some cases, a revision may relate to just a few points in one or more provisions, while in others it may affect almost an entire Convention, which it has become necessary to revise owing to changing needs and techniques. It is important that the methods used to conduct the various types of revision are consistent with the scope of the revision planned and that the choice of which legal tool to use is made only once the type of revision has been decided. This choice should be dictated by circumstances, with the extent and complexity of the revision governing the type of tool to be used.

5. In this context, the current study aims to give an overview of the tools available to the Organization as far as revision procedures and forms of instruments are concerned. New solutions could, if necessary, be explored within the institutional framework of the ILO by going back to the basic principles of treaty law. For the sake of simplicity, this study will only deal with the revision of Conventions. If the Working Party so wishes, the Office could later submit a document on the revision of Recommendations, when the examination of these instruments has been completed. (8)

6. In addition to the double-discussion procedure, the Standing Orders of the Conference also make provision for a specific revision procedure and a general single-discussion procedure. Furthermore, a simplified procedure was approved by the Governing Body in 1965. As regards the instruments, the Constitution and the Standing Orders of the Conference only make provision for the adoption of Conventions and Recommendations. A certain flexibility had been introduced in practice in 1982 with the adoption of a protocol to revise a Convention. Certain Conventions make provision for an even more flexible method of revision, allowing some provisions to be amended without the need to adopt a new Convention.

7. This review also covers the issue of a regular examination of revision needs. It will be recalled that when the Working Party began its work in 1995, no systematic evaluation of revision needs had been carried out since the one in 1987, (9) itself an update of a previous evaluation dating back to 1979. (10) The Working Party thus came to examine almost 150 Conventions in the space of four years to determine whether or not they were up to date. At this stage, the question therefore arises of whether to continue at this pace and wait another decade before undertaking the next evaluation of revision needs or whether to make available a procedure which would allow the Committee on Legal Issues and International Labour Standards (LILS Committee) and the Governing Body regularly to examine such needs on the basis of information provided by the constituents.
I. Procedures for the revision of Conventions

8. Article 44 of the Standing Orders of the Conference provides a specific procedure for the revision of Conventions. This procedure was introduced in 1929, following the adoption the previous year of a provision of the Standing Orders of the Governing Body relating to placing the revision of a Convention on the agenda of the Conference (current article 11 of the Standing Orders of the Governing Body, reproduced in article 43 of the Standing Orders of the Conference). This procedure has not been used for a number of years. In practice, since the 1960s the double-discussion procedure usually applicable for the adoption of new standards, for which provision is made in article 39 of the Standing Orders of the Conference, has been preferred; on some occasions, the Organization has made use of the single-discussion procedure (article 38 of the Standing Orders), at times preceded by a technical conference or preparatory general discussion. Furthermore, a simplified revision procedure, involving setting up a standing revision committee within the Conference, was approved by the Governing Body in 1965,(11) but has not yet been used.

A. The specific revision procedure

9. The procedure outlined in article 44 of the Standing Orders of the Conference is a single-discussion procedure. In 1929, it constituted a departure from the only procedure contained at that time in the Standing Orders for the adoption of Conventions, which was a double-discussion procedure.(12) This solution had been proposed by the Legal Adviser in a note submitted to the Governing Body in March 1929,(13) which reflected the original approach to revision. More specifically, the double-discussion system was considered as inappropriate given that "revision of a Convention (...) implies the discussion of questions which have already been under consideration for a long time" and that it is limited to being "the introduction of modifications in a Convention in the light of experience acquired in the course of years".(14)

10. Under this procedure, the Office submits draft amendments to the Conference established on the basis of the Governing Body's report which decides on the total or partial revision of the Convention, it being understood that the Convention can only be revised in respect of the question(s) placed by the Governing Body on the agenda of the session. Following their adoption by the Conference, the amendments, together with consequential amendments of the unamended provisions of the original Convention, are referred to the Conference Drafting Committee. This Committee combines with them the unamended provisions of the original Convention so as to establish the final text of the Convention in the revised form. This text is then submitted to the Conference for a final vote.

11. Although this procedure was expressly provided for both total and partial revisions, it appears primarily to be of interest for partial revisions concerning specific points. It was this type of revision that the Organization practised up until the 1949 revision of three of the maritime Conventions adopted in Seattle in 1946, the points to be revised being mentioned specifically in the item placed on the agenda of the Conference by the Governing Body.(15)
B. The single-discussion or double-discussion procedure

12. For the last 50 years the practice at the Conference has been to undertake revisions taking as a basis for discussion -- with a few exceptions -- a draft new Convention rather than proposed modifications to specific points. The trend has thus been to no longer really distinguish between the exercise of revision and that of adopting new standards. As a result, reference has no longer been made to article 44 of the Standing Orders of the Conference but instead to either articles 38 or 39, as appropriate. Within this evolution, it is interesting to note that up until 1962 only the single-discussion procedure was ever applied, while since then most Conventions have been revised following the double-discussion procedure -- the normal procedure for the adoption of new standards -- in accordance with article 10, paragraph 4, of the Standing Orders of the Governing Body. The single-discussion procedure was only used during this latter period in association with the adoption of protocols or revisions preceded by another meeting (a preparatory technical conference or a tripartite meeting for maritime Conventions; a general discussion in the case of the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)). The double-discussion procedure is nevertheless both cumbersome and slow and seems better suited to total revisions.

C. Preparatory technical conferences and general discussions

13. Preparatory technical conferences have been defined by the Office as intended to develop and specify the questions to be submitted to the International Labour Conference. The Standing Orders of the Governing Body makes specific mention of this (article 10, paragraph 3), providing that the Governing Body may also decide to convene such conferences prior to placing an item on the agenda of the Conference, for the purpose of reporting to it on this question, as well as at the time of its inscription. Article 38 of the Standing Orders of the Conference, relating to the single-discussion procedure, outlines in paragraph 4 the consequences of convening a preparatory technical conference in order for the Office to prepare questionnaires and reports. The importance of preparatory conferences was established in the Constitution in 1946. Article 14, paragraph 2, of the Constitution considers them as one of the ways "to ensure thorough technical preparation and adequate consultation of the Members primarily concerned" prior to the adoption of a Convention or Recommendation by the Conference.

14. As regards maritime standards, the holding of preparatory conferences or meetings (cheaper) prior to a single discussion in view of the adoption of a new or revised instrument during a maritime session of the Conference is established practice. These preparatory conferences or meetings are themselves preceded by a meeting of the Joint Maritime Commission which carries out an initial examination of the question(s) which may be placed on the agenda of the Conference and gives its opinion to the Governing Body on this matter. The use of preparatory technical conferences or meetings of this kind in respect of revisions has, up until now, been restricted to maritime instruments. The most recent example is the 1994 tripartite maritime meeting which preceded the Maritime Session of the Conference in 1996 -- eight instruments were revised at that session (one partially).
15. In addition to preparatory technical conferences, from time to time the Organization has used another method of preparing for possible standard-setting action -- a general discussion prior to the adoption of standards through the single- or double-discussion procedure. This procedure was used for the first time in 1947 for the adoption of new standards. The question placed on the agenda for a general discussion was freedom of association and industrial relations (22) and the first point of discussion proposed in the report prepared by the Office concerned the desirability of drawing up a draft international Convention concerning freedom of association (23). The following year the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) was adopted following the single-discussion procedure. The adoption of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) also followed on from this general discussion, but after a double-discussion procedure. The Governing Body has noted in certain cases that on the assumption that the general discussion would lead to a decision by the Conference to draw up a draft international instrument in the given area, this general discussion could be considered as a first discussion, the second discussion with a view to the adoption of an instrument taking place the following year (24).

16. Few general discussions have been followed by the revision of an instrument. The general discussion of 1994 on the role of private employment agencies in the functioning of labour markets (25) was followed in 1997 by the adoption of the Private Employment Agencies Convention, 1997 (No. 181), revising the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), following a single discussion. The general discussion had been proposed by the Office owing to the controversy about the question of employment agencies. This discussion put an end to the stalemate, a consensus being reached in favour of a substantial revision of Convention No. 96, and precisely established the objectives to be pursued by the revised standard (26).

D. A simplified revision procedure

17. The need for a more flexible procedure for certain types of revision has frequently been referred to over the years. As indicated above (paragraph 8), a simplified procedure was approved in 1965 on the basis of the suggestions contained in the Report of the Director-General to the Conference in 1963 (27) but was not put into effect. Implementation of a procedure of this kind should be considered today if the aim is to undertake revisions within a reasonable space of time.

18. In addition to addressing the problem -- currently in the process of being solved -- of eliminating obsolete Conventions, the proposed simplified procedure was justified at the time by two further factors. Firstly, the procedure usually used for revisions was inappropriate when carrying out modifications of a purely technical nature which were however necessary to adapt the instruments to new circumstances and needs. In this connection the Director-General recommended in fact instituting a procedure similar to the amendment procedure contained in certain Conventions (28) (see paragraphs 29-33 below). Contrary to his wish, this question has not been examined further. Secondly, the Director-General deplored the fact that neither the Conference nor the Governing Body contained a standing revision committee whose function would consist of revising in a systematic and ongoing manner, for a certain number of years, instruments containing technical provisions of this kind.
19. As a follow-up to the Report of the Director-General in 1963, the Committee on Standing Orders and the Application of Conventions and Recommendations unanimously recommended to the Governing Body, at its 159th Session (June-July 1964) to propose to the Conference that a procedure be established on a trial basis for the technical revision of international labour standards. The aim of this procedure would be to deal with straightforward questions of revision, free of any controversy, relating to specific technical provisions or points. Before placing such questions on the agenda of the Conference, the Governing Body should reach broad consensus among the three groups regarding the various details of the proposed revision to enable the Conference to take a decision in the shortest possible time and without unduly adding to its volume of work. The revisions would be undertaken in accordance with a systematic and ongoing schedule.

20. This procedure would be part of the procedure for the revision of Conventions provided in article 11 of the Standing Orders of the Governing Body and in article 44 of the Standing Orders of the Conference. It would include the following phases. The Committee on Standing Orders and the Application of Conventions and Recommendations (the successor of which is the Committee on Legal Issues and International Labour Standards (LILS Committee)) would recommend that the Governing Body examine the desirability of placing the partial revision of a given Convention on the agenda of the Conference. Should the Governing Body agree to the proposal, governments would be notified of its decision in accordance with article 11, paragraph 6, of the Standing Orders of the Governing Body. According to paragraph 7 of the same article the Governing Body, after a period of four months, would define the questions to be placed on the agenda of the Conference, taking into account the observations received from governments. At the stage of the procedure before the Conference, a technical revision committee would be set up in accordance with article 8 of the Standing Orders of the Conference. According to article 44, paragraph 10, of the same Standing Orders, the revision may not extend beyond the limits set by the Governing Body when placing the item on the agenda.

21. This committee would be a permanent one but, in the same way as the Standing Orders Committee of the Conference, it would only meet when necessary. Either a single or a group of Conventions could be submitted to it. It would be made up of a number of regular members to ensure consistency in its work, who would be joined as appropriate by individuals with specific technical skills depending on the questions under examination. The subject of the revision would be sufficiently specific and clear to permit the Committee to perform its duties within a few sittings. As well as accelerating the pace of revision, this procedure would make it possible to keep the number of main questions placed on the agenda of the Conference within a reasonable limit, this committee not being in competition with the technical committees.

22. At its 161st Session (March 1965), the Governing Body approved the recommendations of the Committee on Standing Orders and the Application of Conventions and Recommendations outlined above. In the present circumstances the decision to set up a committee of this kind remains particularly interesting and should be re-examined. In particular, this committee could permit the acceleration of certain purely technical revisions which usually have little likelihood of being selected for inclusion on the agenda given that they are competing with subjects of considerably greater
importance. The Office could examine whether this procedure could be used for some of the revisions currently envisaged.

I I. The instruments

23. Revisions can lead to the adoption of a variety of instruments. In the majority of cases, the revision of one, or sometimes more, Conventions has resulted in the adoption of a new Convention; on some rare occasions the Conference has partially revised Conventions using protocols. The specific amendment procedure for which provision is made in certain Conventions has sometimes been implemented. Some Conventions containing a special updating technique will also be mentioned, although this does not imply their revision.

A. The revision of one or more Conventions
by the adoption of a new Convention

24. The adoption of a new Convention following a revision is the approach the Organization has preferred both for the partial revisions it undertook up until the end of the 1940s (see paragraph 11 above) as well as for total revisions, the principal form that current revisions take. This manner of proceeding has contributed to the overlapping of instruments on the same subject which damages the coherence of the standard-setting system. Revisions leading to the adoption of a new Convention, perhaps with a new number (this practice could be changed), should as far as possible be limited to cases where the extent of the revision justifies the total redrafting of an instrument, and also to the consolidation of a number of instruments.

25. The consolidation of Conventions has always aroused considerable interest, despite being seen as a complex undertaking involving substantial resources. Cases of a revision leading to a consolidation of instruments are in fact few and far between and the most interesting examples are the well known ones of the Minimum Age Convention, 1973 (No. 138), which revises -- under certain conditions -- ten Conventions (in fact seven if one does not consider the successive revisions of the same Convention), and of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), which revises -- again under certain conditions -- six Conventions. Further Conventions which revise a number of others are the Employment Injury Benefits Convention, 1964 (No. 121), the Medical Care and Sickness Benefits Convention, 1969 (No. 130), the Holidays with Pay Convention (Revised), 1970 (No. 132), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165). For these Conventions, the revisions relate to two or three earlier Conventions (three plus a second revision for Convention No. 121).

B. Protocols

26. In 1982, the Organization adopted a protocol for the first time, namely the Protocol to the Plantations Convention, 1958 (No. 110), thus diversifying its methods of revision. This new form of revision, the advantages of which had already been highlighted in 1979 by the Ventejol Working Party, had been
proposed by the Office with a view to simplicity, given the limited extent of the revision. In particular there was a desire to avoid having to create a new Convention with a new number for the revision of just one Article of the Convention (Article 1 concerning the scope of application). During the discussion at the Conference it had been noted that the innovation related only to the form and not the substance, the Protocol having the same effect as a revised Convention which would leave the original Convention open to further ratifications. The Conference subsequently adopted three other protocols: the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), in order to introduce possible dispensations from the prohibition of night work for women stipulated in the Convention, as well as further measures to make the Convention more flexible; the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), aimed at extending the Convention to the non-commercial services sector; and the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which extends the list of Conventions included in the appendix to the Convention and replaces the reference to one Convention in the appendix by the new Convention revising it.

27. Furthermore, Convention No. 165 anticipates the possibility of the revision of certain specific provisions in the form of a protocol. In accordance with Article 11(h) of this Convention, unemployment benefit and family benefit granted to seafarers shall not be less favourable than those provided in any future Convention laying down standards superior to those specified in the Convention, which the Conference has recognized as applicable by means of a protocol adopted in the framework of a special maritime question included in its agenda. This provision has not yet been applied.

28. A protocol is both a simple and flexible instrument which is particularly useful for partial revisions. In the way that it has been used it is ideal if the aim is to modify or supplement certain provisions on specific points, while keeping a framework Convention intact, its ratifications unaltered (the ratification of the protocol does not imply the denunciation of the Convention) and leaving it open to new ratifications. Public international law recognizes various types of protocols. An examination of the possibilities offered by protocols would be useful from the perspective of the revision proposals adopted by the Governing Body.

C. Amendments

29. The chief difference between an amendment and a "classic" revision lies in the fact that an amended text is substituted for the original text. Once the amendment is adopted or comes into force, only the amended text of the Convention is open to new ratifications. The amendment is submitted for ratification or acceptance by the States parties to the original Convention (in the law of treaties there are various procedures in this regard). Its form is simpler than that of a protocol as it contains neither preamble nor final provisions. The Constitution of the ILO and the Standing Orders of the Conference do not contain any express provisions relating to either amendments to Conventions or to protocols. Three Conventions make provision for a specific amendment procedure with respect to their appendices and six other Conventions do the same with respect to special provisions applicable to certain countries.
30. An amendment procedure to modify appendices was implemented for the first time in respect of Convention No. 83. The aim of this Convention is to extend to non-metropolitan territories the application of the provisions of certain Conventions set forth in the Schedule to the Convention, subject to possible adjustments on the basis of a declaration communicated by the member States at the time of ratification. According to this procedure, in keeping with Article 5 of the Convention, the Conference may adopt by a two-thirds majority -- a majority identical to that required for the adoption of Conventions and Recommendations -- amendments to the Schedule to the Convention, including the provisions of further Conventions in the Schedule or substituting for the provisions of any Convention set forth in the Schedule the provisions of any Convention revising that Convention which may have been adopted by the Conference. As from the date of adoption of such an amendment, only the amended version of the Convention is open to ratification by member States. As regards member States which are already party to the Convention, the amendment takes effect from the date of their acceptance. In 1948, one year after the adoption of Convention No. 83, and following the revision of the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and of the Night Work (Women) Convention (Revised), 1934 (No. 41), an instrument of amendment to the Convention was adopted by the Conference in order to replace the provisions of these Conventions contained in the Schedules by the corresponding provisions of Conventions Nos. 89 and 90. Convention No. 83 was only ratified following the adoption of this amendment and therefore is only in force in its amended form.

31. In the same way, the Conference may adopt amendments to the Schedule attached to Convention No. 121 containing the list of occupational diseases. This Schedule was amended in 1980. In accordance with Article 31, paragraph 2, of the Convention, the amendment shall take effect in respect of member States to the Convention which have notified their acceptance thereof. It is the amended list which is in force for States that ratify the Convention following the adoption of the amendment. It should be noted that in 1980 this question did not constitute an item on the agenda of the Conference in its own right, but was only one point of the broader question of safety, health and the working environment, the other point being the adoption of instruments on that question (first discussion). With a view to increasing the pace of work, the point relating to the amendment had been examined by a working party appointed by the Committee, which had held its sittings (four) in parallel with the Committee's meetings. Mention should also be made of Article 22 of Convention No. 97 which makes provision for exactly the same procedure (even if the term amendment is not used) for the modification of its Annexes.

32. According to the amendment procedure contained in several Conventions prior to 1950 and having special provisions applicable to certain countries, the Conference may, at any session where the subject is included on its agenda, adopt by a majority of two-thirds, draft amendments to these provisions. The draft amendment, once it has been ratified by the Member(s) to which it applies, will come into force as an amendment to the Convention. This original procedure, first proposed by the Office in 1937 in connection with the preparatory work for Convention No. 59, responded to two different concerns -- on the one hand, it should not be necessary to wait for a general revision of the Convention in order to amend Articles only concerning certain countries while the situation in those countries was subject to re-examination after a certain length of time; and on the other hand, with respect to obligations only affecting certain Members, amendments adopted by the Conference by a two-thirds majority need only
be ratified by the Members directly involved. These procedures have never been used and their value is essentially a historic one.

33. Like the protocol, the amendment is an instrument which offers a number of advantages for simple and partial revisions. At the ILO its use is limited to a few rare Conventions, while it is a current practice in many other international organizations.

D. The updating of Conventions by reference to other instruments

34. Some Conventions have the particularity of making provision for the obligation of each State party to the Convention to regularly conform, in determined spheres, to the most recent known data in those spheres. By way of example we would mention the Radiation Protection Convention, 1960 (No. 115), Article 6, paragraph 2, of which stipulates that the "maximum permissible doses and amounts [of ionizing radiations and radioactive substances] shall be kept under constant review in the light of current knowledge". In its appraisal of respect for this provision, the Committee of Experts on the Application of Conventions and Recommendations refers to the most recent recommendations of the International Commission on Radiological Protection and other international instruments such as ILO codes of practice and standards prepared jointly by several international institutions, including the ILO. The Occupational Cancer Convention, 1974 (No. 139), provides in Article 1, paragraph 3, that "in making the determinations required by paragraph 1 [the carcinogenic substances and agents] consideration shall be given to the latest information contained in the codes of practice or guides which may be established by the International Labour Office, as well as to information from other competent bodies". Lastly, the Labour Statistics Convention, 1985 (No. 160), provides in Article 2 that "in designing or revising the concepts, definitions and methodology used (...) Members shall take into consideration the latest standards and guidelines established under the auspices of the International Labour Organization". This technique of referral to non-binding instruments which are themselves regularly updated offers the advantage of limiting the revision needs of such Conventions on the points in question. It is particularly useful for Conventions relating to scientific or technical standards, as such standards are in constant evolution and in principle do not give rise to controversy when they are established by institutions having internationally recognized authority on the subject. Provisions of this type should be kept in mind, where appropriate, during the drafting of future revised or new instruments, in particular in the area of occupational safety and health.

III. Examining revision needs

35. The provisions established since the beginning to permit the revision of international labour Conventions clearly indicate that the need to adapt them to developments in socio-economic needs and approaches, as recalled by the Director-General in his Report to the Conference in 1999,(47) has always been taken into consideration. The Organization has used a variety of techniques to evaluate this need for adaptation: periodic reports as provided in the Conventions, general surveys, and overall reviews conducted by the working parties of the Governing Body. These techniques are insufficient in some regards and it would appear timely to examine the possibility of supplementing them.
**A. Periodic reports provided in the final Articles of Conventions**

36. All Conventions stipulate in their final provisions the presentation by the Governing Body to the Conference of a report on the working of the Convention, and the examination by the Governing Body of the question of its eventual revision. In 1928, the provision of the Standing Orders of the Governing Body on the procedure relating to the inclusion on the agenda of the revision of a Convention did not envisage any other approach for initiating the revision procedure (now Article 11, paragraph 1). But since 1934, when the very first revisions were undertaken, it has been found necessary also to make provision for a more general procedure, apart from the case of the submission of a report on the application of a Convention, and the Standing Orders have been amended accordingly (current article 11, paragraph 6). Furthermore, in 1950, the Governing Body found the presentation of periodic reports -- which at the time were due every five or ten years -- on the whole not to be satisfactory. Specifically, it noted that very few proposals for revision had arisen as a result of such reports. The set periodicity was therefore replaced by a more flexible approach as from 1951 (see note 48). It should be noted that the last report on the application of a Convention that resulted in its revision was the report on Convention No. 3 which the Governing Body requested in 1947. This Convention was revised in 1952 by Convention No. 103. Furthermore, since 1980 the Governing Body has not asked the Office to prepare any reports of this kind. That last report related to Conventions Nos. 3 and 103 and did not give rise to any revision proposals at the time.

**B. General surveys**

37. As explained in detail in the document the Office submitted to the LILS Committee in March 1995, important amendments to the Constitution were adopted in 1946. It was stipulated in article 19, paragraph 5(e) that member States which have not ratified a given Convention shall be required periodically to provide the Office with reports on the position of their law and practice in regard to the matters dealt with in the Convention, showing the effect they have given or they intend to give to each provision of the Convention, and also on the difficulties preventing or delaying the ratification of the Convention. This reform led to the Committee of Experts on the Application of Conventions and Recommendations to conduct studies -- called general surveys -- on the basis of the reports received from member States under both article 19 and article 22 of the Constitution. The aim of these surveys is to combine three objectives: the in-depth examination of the conditions and difficulties of application of ratified Conventions, the examination of legal difficulties for ratification, and the analysis of national circumstances with regard to non-ratified Conventions and Recommendations. The appearance of general surveys relegated to second place the reports submitted in accordance with the final Articles of Conventions, which appear to have now become obsolete.

38. During the discussion of the Report of the Director-General to the Conference in 1994, the essential role of general surveys for the evaluation of standards and their limits was highlighted. It was hoped that this evaluation would serve as a basis for the revision and updating of existing standards. Considerable work has been done in this regard since then in the general survey relating to migrant...
workers submitted to the Conference in 1999. The Governing Body, following a proposal by the Working Party, had requested that this general survey be conducted owing to the low rate of ratification of Convention No. 97 and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). On the basis of the conclusions of the Committee of Experts and the Conference Committee on the Application of Standards, a proposal for a general discussion on the question of migrants, in order to examine, in particular, the possibility of revising the two Conventions concerned, is now included in the portfolio of proposals for the agenda of the Conference.\(^{55}\)

39. Nevertheless, and keeping strictly at this stage to the question of evaluating revision needs, general surveys conducted once yearly on a small number of instruments\(^{56}\) and which do not systematically relate to Conventions for which difficulties have been recorded, are limited instruments. General surveys are essentially adapted to the need for in-depth analysis.

C. The working parties of the Governing Body

40. On a number of occasions the Governing Body has felt it necessary to go beyond the annual examination of a few instruments and to conduct an evaluation of the entire body of ILO standard-setting instruments. At the 194th Session (November 1974) of the Governing Body the Office submitted an in-depth review of international labour standards, the aim of which was to determine the "means of keeping ILO standards fully relevant to the needs and realities of the contemporary world".\(^{57}\) An appendix to this document contained an analysis and provisional conclusions on the status of existing Conventions and Recommendations, focusing in particular on the need to revise or even consolidate them.\(^{58}\) Following its examination of this document, the Programme, Financial and Administrative Committee of the Governing Body established, in March 1977, a Working Party on International Labour Standards, called the "Ventejol Working Party" after its chairman.\(^{59}\) This Working Party was instructed to determine the categories into which the existing instruments should be divided, to classify the instruments into the appropriate category, to define those that should be revised as well as subjects concerning which the formulation of new instruments appeared necessary. The final report of the Working Party, submitted to the February-March 1979 session of the Governing Body,\(^{60}\) contained a proposal for the classification of standards into four categories, which was approved by the Governing Body.\(^{61}\) In 1984, following the discussion of the Report of the Director-General to the Conference, a second Ventejol Working Party was instructed by the Governing Body to submit a revised classification of existing instruments.\(^{62}\) The proposed classification in the final report of the Working Party\(^{63}\) was approved by the Governing Body at its March 1987 session.\(^{64}\)

41. The present Working Party was set up by the Governing Body at its March-April 1995 session.\(^{65}\) This decision followed on from the Conference discussions in 1994 on international labour standards. The Working Party had been instructed to make recommendations to the LILS Committee concerning revision needs for the Organization's instruments, as well as a number of other questions relating to standard-setting policy.\(^{66}\) This examination of all Conventions and Recommendations represents a considerable workload for each working party; nevertheless, in the absence of effective follow-up, this work will have to be repeated in a few years.
D. A regular examination mechanism

42. Taking the above considerations into account, and in order not to add to the administrative burden of the constituents by introducing a new mechanism for periodic reports, the Working Party could consider the possibility of recommending the establishment of a flexible and ad hoc procedure enabling those constituents who so wish to propose the revision of provisions they consider to be out of date. This procedure could consist of three phases. First of all, the constituents would inform the Office of revision proposals. The Office would then communicate these proposals, together -- if necessary -- with an initial analysis, to the other constituents, inviting them to communicate their views. During the third stage, the Office would conduct an examination of all the information collected and would report to the LILS Committee, to allow it to formulate recommendations to the Governing Body on the timeliness of the revision in question. It is interesting to note in this regard that certain revisions have been initiated as a result of ratification or implementation difficulties reported by certain States; following their reports, consultations were held and confirmed that the problem also affected many other Members. This is the case for the revision of the Protection against Accidents (Dockers) Convention, 1929 (No. 28) (ratification difficulties for Germany and Great Britain), the revision of the Hours of Work (Coal Mines) Convention, 1931 (No. 31) (ratification difficulties for Great Britain, while the entry into force of the Convention depended on its ratification by seven member States, including Great Britain) and the revision of the Fee-Charging Employment Agencies Convention, 1933 (No. 34) (implementation difficulties for Sweden), which occurred in 1932, 1935 and 1949 respectively.

IV. Closing remarks

43. This first examination of revision methods for international labour standards shows that the Organization has at its disposal a certain range of procedures and legal instruments with which to meet current needs. Nevertheless, several of these revision methods have been used either very little or not at all in recent years. For almost 40 years the Organization has preferred to use just one of them -- the full revision of a Convention by the adoption of a new one following a double-discussion procedure. This method is the longest and the most cumbersome and should, in principle, be kept for cases of the total revision of a Convention or for the consolidation of several different standards. Nevertheless, even taking the case of a total revision, the possibility of replacing a double discussion by a preparatory general discussion followed by a single discussion could be considered. When the subject of the revision is not precisely defined or where it appears difficult to obtain consensus among the various groups, a general discussion of this kind could help to clarify the situation, as in the case of the revision of Convention No. 96.

44. Other types of preparatory meetings could significantly help to lighten the workload of the Conference during the final discussion of a revised draft instrument. The maritime preparatory meetings offer an example in this regard. The 1994 meeting preceded the revision of eight maritime instruments (including one partial revision) during the maritime session of the Conference in 1996, following a single discussion. More recently, in a joint letter to the Director-General, representatives of
shipowners' and seafarers' organizations stressed that revisions could be expedited if the drafts of revised instruments reflected the various points of view of the constituents prior to the final last stage of discussion at the Conference.

45. The Working Party will certainly wish to make proposals to the LILS Committee, and through it, to the Governing Body on the manner in which to proceed in order to improve and accelerate the process of revising Conventions. A two-pronged approach could be considered for this purpose. At the level of the Governing Body, the next version of the portfolio could include in a more generalized manner options on the procedures and forms of revision which are best adapted to the particular needs of the Conventions to be revised, as is already the case for some proposals. Furthermore, certain questions relating to the procedure and form of revisions could be clarified. These involve:

- re-examining the possibility of using a simplified procedure such as that introduced in 1965, and specifying the necessary procedures for the implementation of a permanent revision mechanism;
- analysing the prospects for amending Conventions in conjunction with forms of partial revision and a more targeted use of protocols;
- setting up a flexible procedure to examine revision needs which provides a coherent follow-up to revision requests presented by constituents.

46. The Working Party on Policy regarding the Revision of Standards is invited to examine this document, in particular the proposals included in paragraph 45 above, and to submit its recommendations on these questions to the Committee on Legal Issues and International Labour Standards and, through it, to the Governing Body.


Point for decision: Paragraph 46.

1. This Instrument of Amendment has not yet come into force.

2. Doc. GB.262/LILS/3, para. 9.

3. Docs. GB.262/9/2, para. 52 and GB.262/LILS/3, para. 67.

4. The revision of the Maternity Protection Convention (Revised), 1952 (No. 103) was first discussed at the 87th Session (1999) of the Conference (the Working Party recommended taking into consideration the Maternity Protection Convention, 1919 (No. 3) in this connection). The 11 other Conventions are: the Night Work of Young Persons (Industry) Convention, 1919 (No. 6); the White Lead (Painting) Convention, 1921 (No. 13); the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); the Medical
Examination (Seafarers) Convention, 1946 (No. 73); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); the Guarding of Machinery Convention, 1963 (No. 119); the Maximum Weight Convention, 1967 (No. 127); the Benzene Convention, 1971 (No. 136); and the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153).


8. See doc. GB.274/LILS/WP/PRS/4, para. 4.


12. The Standing Orders of the Conference were amended in 1938 in order to reflect the three procedures being used in practice: double discussion, single discussion and preparatory technical conference followed by a single discussion (see *Record of Proceedings* of the 24th Session (1938) of the International Labour Conference). As far as the adoption of new standards is concerned, some preparatory technical conferences have been followed by a double discussion all the same.


14. ibid., p. 730.

15. Only four Conventions underwent a total revision during this period: the Holidays with Pay (Sea) Convention, 1936 (No. 54), revised by the Paid Vacations (Seafarers) Convention, 1946 (No. 72); the Hours of Work and Manning (Sea) Convention, 1936 (No. 57), revised by the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76); the Fee-Charging Employment Agencies Convention, 1933 (No. 34), revised by the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96); and the Migration for Employment Convention, 1939 (No. 66), revised by the Migration for
16. The loss of interest in article 44 can also be explained by the fact that since this article was adopted, the Standing Orders of the Conference have been amended to make provision for a single-discussion procedure for the adoption of new standards, now contained in article 38.

17. The case of the revision of the Fee-Charging Employment Agencies Convention, 1933 (No. 34) is unusual in this respect. At its 30th Session (1947) the Conference adopted a resolution placing the question of this revision on the agenda of its following session. There was such a degree of controversy, however, that the draft Convention could not be adopted. The question was once again placed on the agenda of the 32nd Session of the Conference, finally leading to the adoption -- through the single-discussion procedure -- of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

18. The Protocol of 1990 relating to the Night Work (Women) Convention (Revised), 1948 (No. 89), the adoption of which was discussed at the same time as that of the Night Work Convention, 1990 (No. 171) and Recommendation (No. 178), was however the subject of a double discussion.


20. With respect to the revision of maritime Conventions, only those undertaken in 1949 which led to the adoption of the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), the Accommodation of Crews Convention (Revised), 1949 (No. 92) and the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) have been discussed -- using the single-discussion procedure -- at an ordinary session of the Conference and did not give rise to a preparatory technical conference given the very small number of points in question.

21. These are the Placing of Seamen Convention, 1920 (No. 9), the Hours of Work and Manning (Sea) Convention, 1936 (No. 57), the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Recommendation (No. 109), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Labour Inspection (Seamen) Recommendation, 1926 (No. 28).


24. See in this connection the discussions held within the Governing Body concerning the placing on the


28. ibid.

29. Doc. GB.159/15/1.


31. Convention No. 138 revises the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Sea) Convention, 1920 (No. 7), the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), the Minimum Age (Fishermen) Convention, 1959 (No. 112), and the Minimum Age (Underground Work) Convention, 1965 (No. 123). Convention No. 58 itself revises Convention No. 7, Convention No. 59 revises Convention No. 5, and Convention No. 60 revises Convention No. 33.

32. These are the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), the Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39), and the Survivors' Insurance (Agriculture) Convention, 1933 (No. 40).

33. Convention No. 121 revises the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), and the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), which itself revises Convention No. 18.


37. It should be noted that the Constitution itself can be amended, in accordance with its article 36. It has been amended on six occasions and a new instrument of amendment was adopted in 1997, as indicated in paragraph 1 above, but has not yet come into force.

38. These are the Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83), the Migration for Employment Convention (Revised), 1949 (No. 97) and Convention No. 121.


40. The acceptance, while a clear expression of the Member's consent to be bound, can be less formal than ratification, and notably, depending on the procedures applicable in each country, may not require parliamentary approval.


42. In accordance with Article 5, paragraph 5, of the Convention.

43. Article 31, paragraph 3, of Convention No. 121 specifies that only the amended version of the Convention remains open to ratification "unless the Conference otherwise decides".

44. Following this double-discussion procedure, the Conference adopted the Occupational Safety and Health Convention, 1981 (No. 155) the following year.

45. Under Article 14, paragraph 1, of Convention No. 97, a Member may exclude the application of the Annexes by way of a declaration appended to its ratification.

46. International Labour Conference, 23rd Session (1937), Report VI.


48. This provision today reads as follows: "At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working
of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part."

49. Under article 11, paragraph 1, of the Standing Orders of the Governing Body: "When the Governing Body, in accordance with the provisions of a Convention, considers it necessary to present to the Conference a report on the working of the said Convention and to examine if it is desirable to place the question of its revision in whole or in part on the agenda of the Conference, the Office shall submit to the Governing Body all the information which it possesses, particularly on the legislation and practice relating to the said Convention in those countries which have ratified it and on the legislation relating to the subject of the Convention and its application in those which have not ratified it. The draft report of the Office shall be communicated for their observations to all Members of the Organization."

50. This provision stipulates that: "If at any time other than a time at which the Governing Body, in accordance with the provisions of a Convention, considers it necessary to present to the Conference a report on the working of the said Convention, the Governing Body should decide that it is desirable to consider placing upon the agenda of the Conference the revision in whole or in part of any Convention, the Office shall notify this decision to the governments of the Members and shall ask them for their observations, drawing attention to the points which the Governing Body has considered specially worthy of attention."

51. Minutes of the 112th Session of the Governing Body (June 1950), Appendix XIII.

52. Doc. GB.262/LILS/3, paras. 44-58.


55. Doc. GB.276/2, paras. 127-150.

56. A general survey conducted in 1969 is an exception to this rule and concerns 17 Conventions. See ILO: *The ratification outlook after 50 years: Seventeen selected Conventions*, extract from the Report of the 39th (1969) Session of the Committee of Experts on the Application of Conventions and Recommendations. This survey is centred essentially, as its title indicates, on the ratification prospects of these instruments.

57. Doc. GB.194/PFA/12/5, para. 1.

58. ibid., Appendix I.


61. ibid., p. 14.


64. ibid., p. 7.


66. The mandate of the Working Party is appended to doc. GB.267/LILS/WP/PRS/2.


68. International Transport Workers’ Federation (ITF).


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