



NINTH ITEM ON THE AGENDA

Reports of the Committee on Legal Issues and International Labour Standards

First report: Legal issues

1. The Committee on Legal Issues and International Labour Standards (LILS) met on 20 March 2009. The following members served as Officers:

<i>Chairperson:</i>	Mr G. Corres (Government, Argentina)
<i>Employer Vice-Chairperson:</i>	Mr J. de Regil
<i>Worker Vice-Chairperson:</i>	Ms H. Yacob

I. The status of privileges and immunities of the International Labour Organization in member States (First item on the agenda)

2. The LILS Committee had before it a document for decision¹ that provided information on developments since the last report² on the status of privileges and immunities of the International Labour Organization in member States.
3. Introducing the document, the Legal Adviser stated that there had been no new accessions to the Convention on the Privileges and Immunities of the Specialized Agencies (1947 Convention) since the last report. However, the Government of Qatar had presented its instrument of accession to the United Nations, which had not yet been registered because of accompanying reservations. The invitation to member States that had not yet acceded to the 1947 Convention³ had been renewed through the regional directors, and dialogue between the Office and member States was ongoing. The ILO and the Government of Somalia had exchanged notes verbales, giving the ILO the necessary assurances with regard to privileges and immunities in that country. Ongoing dialogue with other UN agencies, especially as part of the “Delivering as One” initiative, had raised awareness

¹ GB.304/LILS/1.

² GB.301/LILS/1 (March 2008); GB.301/11(Rev.), paras 3–13.

³ GB.297/12(Rev.).

of the need for common action, and a plan was currently under discussion. In his view, the regular consideration of the issue by the Governing Body would play a helpful role in encouraging accession to the 1947 Convention. To that end, the Governing Body could reaffirm the importance of the two 1948 resolutions of the International Labour Conference on the subject,⁴ the latter of which stressed the urgency of the situation and invited all member States to grant immediately the benefits of the privileges and immunities provided for in the Convention and its Annex I, pending accession to the Convention.

4. The Employer members, supporting the point for decision and regretting the lack of new accessions to the Convention, deemed the matter essential to the ability of the Office to effectively deliver technical cooperation activities and to support the efforts of its constituents. Notwithstanding their support, they requested further information on several points. Concerning the exchange of notes verbales with the Government of Somalia mentioned in paragraph 3, what was its legal and practical effect, and what was the underlying rationale for pursuing that mechanism? Could the exchange be considered an adequate substitute for Somalia's accession to the 1947 Convention? They also sought clarification regarding the ILO's situation in relation to the United Nations Development Programme (UNDP) on joint projects. Turning to paragraphs 4 and 5, the Employer members considered that the title, "Progress", inferred results and that a more appropriate title could have been "Measures adopted". They asked whether any of the 70 member States that had yet to accede to the Convention were in the process of doing so. They also sought further details from the Office on possible obstacles to accession to or ratification of the 1947 Convention in individual countries, on the online training module, and on the common action plan with other UN specialized agencies mentioned in the document. Supporting the further measures set out in the document, the Employer members believed the collection and Office-wide dissemination of information on how member States implemented aspects of the 1947 Convention was important and should be undertaken by the Office. They also endorsed the suggestion in paragraph 7 that bilateral agreements could be negotiated with member States prior to the ILO undertaking activities in their territory, as had been done by other international organizations. In that respect, the Employer members supported efforts by the Office to undertake a study on the practices of other UN specialized agencies, which could be done in the context of the common action plan mentioned in paragraph 5.
5. The Worker members welcomed the document and supported the views of the Employer members. While commending the Office for its efforts, the Workers were disappointed that no further accessions had been registered since the last report. They noted that, of the 70 member States yet to accede to the Convention, many were presently benefiting from ILO technical cooperation activities. The Worker members urged member States to ratify the 1947 Convention and take into account that the ILO no longer acted as an "executing agency" for the UNDP and therefore did not benefit from the privileges and immunities through that route in the "Delivering as One" pilot countries or when participating in UN joint programmes in other member States. It was not fair to expose the Organization and its staff to such risks while they were doing good work for the member States. It was important to involve the social partners in raising awareness of the issue and promoting accession to the Convention through tripartite consultations at the country level, such as those in the context of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In that respect, they requested information on any concrete measures being undertaken by the Office to build the knowledge and capacity of the social partners on the topic. They also welcomed the development of alliances with other intergovernmental organizations and a joint action plan, and the incorporation of privileges and immunities as a corollary to the ILO's activities as had been done in the recently

⁴ See Appendix II of GB.304/LILS/1 for full texts of the resolutions.

amended *Rules for Regional Meetings*.⁵ That should lead to an awareness among all member States of the fundamental importance of the 1947 Convention for the effective planning and execution of ILO activities. They further supported the document's references to the collection and Office-wide dissemination of information on how member States implemented aspects of the 1947 Convention in order to avoid practical difficulties relating to privileges and immunities. They agreed with the examination of other measures that could ensure at least the level of protection afforded under the 1947 Convention and its Annex I relating to the ILO, such as the negotiation of bilateral agreements with member States and other practices followed by other UN specialized agencies. While supporting the point for decision, the Worker members proposed that an additional subparagraph should be added recommending that the Governing Body should request the Director-General to renew the invitation, on its behalf, to the relevant member States to accede to the 1947 Convention and apply Annex I relating to the ILO in the very near future. Despite the action taken by the regional directors, the Worker members considered that the invitation launched in 2007 by the Director-General had achieved some positive results and therefore proposed the amendment.

6. The representative of the Government of Lebanon advised the Committee that her Government had commenced the process to submit the 1947 Convention to the competent authorities for ratification and would soon apply Annex I. With respect to the further measures proposed in the document, she requested clarification as to whether technical cooperation activities would be suspended in countries that had not acceded to the Convention when there was no bilateral agreement with the ILO on privileges and immunities. She also wondered whether, in the context of "Delivering as One", there were any practical consequences for the different annexes to the 1947 Convention relating to the various specialized agencies.
7. The representative of the Government of Nigeria, speaking on behalf of the Africa group, supported the point for decision in its entirety. He noted that having the appropriate privileges and immunities under the 1947 Convention and its Annex I had become even more necessary to enable the ILO to deliver to member States under the ILO Declaration on Social Justice for a Fair Globalization (Social Justice Declaration). The Convention and its annex not only protected the assets and property rights of the ILO, but also ensured freedom of access and participation of persons at ILO meetings. It also facilitated lower costs for ILO services by eliminating certain taxes and customs duties and by simplifying immigration procedures. He emphasized in particular the ongoing measures referred to in paragraph 5 and the 1948 Conference resolutions calling upon all member States to ratify that vital instrument. Observing that 70 out of the 182 member States had yet to accede to the 1947 Convention and apply its Annex I, more advocacy work was needed on the part of the ILO.
8. The Legal Adviser, replying to the questions asked, explained that the exchange of notes verbales constituted a binding international agreement, but did not substitute or replace full participation in the 1947 Convention. Only accession to the 1947 Convention and application of its Annex I relating to the ILO could assure proper treatment for the Organization and its social partners. Each agency had its own structure and needs; Annex I served the special situation of the ILO as a tripartite organization. In Somalia, the step was taken in response to the need to establish a legal framework since the ILO was to commence technical cooperation activities in a UN joint programme in that country. The step was taken in the context of risk management. In relation to the Employer members' query regarding paragraph 3, the reference concerned the ILO operating as a "participating organization" under the "Delivering as One" and joint programmes in contrast to acting as

⁵ ILO: *Rules for Regional Meetings*, Geneva, 2008 (RM/2008/SO).

an “executing agency” under the Standard Basic Assistance Agreement (SBAA), which the UNDP had with a vast majority of member States. Under the SBAA, the provisions of the 1947 Convention, including any relevant annex, were applied to a specialized agency acting as an “executing agency”. In “Delivering as One” situations, an overarching agreement equivalent to the SBAA had not been negotiated with governments and therefore, in the absence of a sufficient legal framework of privileges and immunities, the treatment that a government guaranteed to the ILO was unclear. As to obstacles to accession and ratification of the 1947 Convention, the Convention provided no distinction based on nationality, which impeded a number of States in so far as local personnel were concerned. Other reasons for a failure to accede included a national legal prohibition on the right to acquire real estate; the Government of Mexico had previously informed the Governing Body that such a prohibition existed on its territory.⁶ In relation to the online training module, the Office had been adapting a training module from one developed by the UN Office of Legal Affairs for the 1946 Convention. It had recently piloted a prototype during the meeting of ILO field directors for Asia and the Pacific and, subject to budgetary and human resource constraints, planned to prepare an online training module for wide dissemination to ILO officials. On the subject of inter-agency collaboration, interested agencies included the International Civil Aviation Organization (ICAO), World Health Organization (WHO), International Telecommunication Union (ITU), World Meteorological Organization (WMO) and the International Fund for Agricultural Development (IFAD). The standards specialists reporting to the Director of the Standards Department remained key to the efforts to involve the social partners.

9. The Employer members supported the Workers’ suggestion for an additional subparagraph requesting the Director-General to renew the invitation to accede to the Convention and apply its Annex I.
10. The Worker members, welcoming the Governments’ interventions and the Employers’ support, looked forward to the announcement of new additional accessions in the next report.
11. The Committee reached a consensus on the Workers’ proposal to add a fourth subparagraph to the point for decision.
12. *The Committee recommends to the Governing Body that it:*
 - (a) *reaffirm the importance of the resolutions concerning the privileges and immunities of the ILO and concerning the interim arrangements in regard to the privileges and immunities of the ILO, adopted by the International Labour Conference at its 31st Session (1948);*
 - (b) *encourage member States, which have yet to do so, to accede to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and apply its Annex I relating to the ILO;*
 - (c) *request the Office to continue to report periodically on the status of the privileges and immunities of the ILO in the member States, and to include in the next such report consideration of relevant practices of other UN agencies, with a view to taking further measures; and*

⁶ GB.301/11, para. 9.

- (d) request the Director-General to renew the invitation, on behalf of the Governing Body, to concerned member States to accede in the very near future to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and apply Annex I relating to the ILO.*

II. Standing Orders of the Conference

(Second item on the agenda)

(a) Practical arrangements for the discussion, at the 98th Session (June 2009) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work

13. The Committee had before it a document for decision⁷ concerning provisional ad hoc arrangements for the discussion, at the 98th Session (June 2009) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. The arrangements concerning timing, procedure for and organization of the discussion were set out in an appendix to the report. They were analogous to the previous decision of the Governing Body on the matter, with effect over a four-year cycle ending with the 97th Session (June 2008) of the Conference.
14. The Worker members supported the point for decision, noting that there was a need to limit the decision to be taken to the 98th Session of the Conference since the 2008 ILO Declaration on Social Justice for a Fair Globalization could have an impact on the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work.
15. The Employer members, endorsing the point for decision, stressed the importance that they accorded to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, and to the discussion of the Global Report each year on one of the four fundamental principles and rights at work. The aims of the Global Report discussion were to provide a dynamic global overview, to measure the effectiveness of ILO assistance, and to highlight future priorities in technical cooperation matters.
16. The representative of the Government of Lebanon inquired about the impact of the 2008 ILO Declaration on Social Justice for a Fair Globalization on the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.
17. The representative of the Government of Nigeria, speaking on behalf of the Africa group, supported the point for decision.
18. The Executive Director of the Standards and Fundamental Principles and Rights at Work Sector (Mr Tapiola), replying to the Government of Lebanon, clarified that the proposal for decision contained the same arrangement that the Governing Body had recommended to the Conference in the past. As to future arrangements, the Governing Body had a different

⁷ GB.304/LILS/2/1.

document⁸ on its agenda that suggested that it should include on the agenda of the 99th Session (2010) of the Conference an item to review the operation of the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work. In any event, a Global Report discussion was already on the agenda of the 99th Session (June 2010) and the 100th Session (June 2011) of the Conference, which would cover the remaining two fundamental principles and rights at work in the four-year cycle currently under way.

- 19. *The Committee accordingly recommends that the Governing Body invite the Conference, at its 98th Session, to adopt the provisional ad hoc arrangements set out in the appendix concerning the discussion of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.***

(b) Proposals regarding representation of Employers' and Workers' delegates at the International Labour Conference

- 20.** The Committee had before it a document for decision⁹ containing certain proposals regarding representation of Employers' and Workers' delegates at the International Labour Conference.
- 21.** The Legal Adviser explained that, as a follow-up to the discussions of the Committee at the November 2008 session of the Governing Body, the document proposed amendments to the Standing Orders that would introduce a new type of submission to the Credentials Committee, a "petition", to enable the Committee to review cases in which a delegate or adviser accredited by a government was allegedly prevented by that government from attending the Conference. The aim of the proposal was to ensure an expeditious resolution of the problem with the involvement of, not only the Credentials Committee, but also the highest authorities of the Conference, its Officers. The Legal Adviser informed the Committee that the Office had identified the need for an amendment to the proposed new article 26quater(1)(a) found in paragraph 6 of the document. The amendment concerned slight editorial adjustments to the existing text of subparagraph 1(a) and an additional sentence, which would result in the following text:

(1) A petition alleging that a duly accredited delegate or adviser was prevented from attending the session of the Conference due to an act or omission of a government shall not be receivable in the following cases:

- (a) if the petition is not lodged with the Secretary-General: within 72 hours from 10 a.m. of the first day of the Conference, which is the date of publication in the *Provisional Record* of the provisional list of delegations containing the name of the delegate or adviser concerned; or, if the petition is based on a revised list, within 48 hours after publication of the revised list. A petition may also be lodged within 48 hours of the act or omission preventing attendance of the delegate or adviser concerned.
- 22.** The Employer members, supporting the point for decision, endorsed the amendments to the Conference Standing Orders as modified by the Legal Adviser's proposal. With reference to paragraph 7 of the document and the form in the appendix, they considered that, while such a form might prove useful, the Office should further explore more sophisticated technological solutions. Such solutions could include making such a form

⁸ GB.304/2/1.

⁹ GB.304/LILS/2/2.

accessible electronically so that the social partners could inform the Office regarding the payment of their travel and subsistence expenses prior to the opening of the Conference. The Employer members knew of unacceptable situations in which governments had announced that they would pay the expenses of the social partners and then did not do so, or did so only partially. The Office was requested to examine further responses to such situations.

23. The Worker members, highlighting the importance of the issue, supported the new type of submission that would enable the Credentials Committee to review such cases. Governments that prevented accredited Workers' or Employers' delegates from attending the Conference were acting in serious breach of the ILO Constitution and the principle of tripartism. With respect to the new text of amendment proposed by the Legal Adviser, they expressed concerns that it might allow for filing a petition even during the third week of the Conference, and sought clarification from the Legal Adviser on how this could be implemented in practice. In general, it was important to urge governments to respect not only the letter but also the spirit of the Standing Orders and ensure a balanced participation of the social partners in relation to government participation. With reference to paragraph 7 of the document, the Worker members were of the view that the form in the appendix did not ask the right questions because delegates were frequently reimbursed after the Conference. The form should be modified accordingly.
24. The representative of the Government of Uruguay, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), recalled that his group had already expressed its views on the matter during the LILS Committee at the 303rd Session of the Governing Body. His group objected to the proposed amendments extending the mandate of the Credentials Committee and to the role proposed for the Officers of the Conference. The isolated cases referred to in the November 2008 document, which had been handled within the current powers of the Credentials Committee, did not warrant any new powers nor related amendments to the Standing Orders. Moreover, the reference to "reasonable doubt" in paragraph 4 of the document contradicted the principle that acts of States, which are subjects of international law, should be presumed to be legitimate. There was no international body in which member States had consented to be assessed or judged on the basis of "reasonable doubt". The aim of verification of credentials was to ensure that credentials met all formal and constitutional requirements, such as those in article 3 and article 13(2)(a) of the Constitution, and the proposed amendments went beyond such a purpose. In fact, there was no constitutional basis for a formal verification of the causes of absence of an accredited delegate. The speaker also questioned paragraph 5 of the document and enquired as to the meaning and implications of the possibility that the Committee might not be satisfied with the comment of the government. He asked whether it could entail holding States accountable beyond their obligations under ratified Conventions and considered that any questions regarding obstacles to the assistance of a Worker or Employer representative should be dealt with through the existing ILO supervisory mechanisms such as those related to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). He further questioned the appropriateness of requesting the Conference to "eliminate legal or practical obstacles" as proposed in paragraph 3, raising as an example the case of obstacles stemming from judicial decisions, for instance, because of the non-payment of family allowance. The cases presented to the Committee did not reflect the responsible conduct of the majority of governments and the handling of those isolated instances had led to the strengthening of social dialogue and technical cooperation, based on existing ILO mechanisms. The GRULAC countries noted that paragraph 7 of the document was not submitted for decision and that in its November 2008 sitting the Committee had only requested the Office to prepare a document incorporating the specific proposals then formulated. Since the Committee had not discussed the possibility of a questionnaire such as the one appended to the document, he considered that the Office had gone beyond its mandate in proposing the

form in the appendix. Although the GRULAC countries complied with their governmental obligations as set forth in the Constitution and Standing Orders and were aware of the necessary representation of Workers' and Employers' delegates at the Conference, the group opposed the point for decision in paragraphs 6 and 8 of the document, and the attached questionnaire.

25. The representative of the Government of Austria supported the proposed amendments to the Conference Standing Orders. However, she considered that the form appended to the document would have to be modified because it was incompatible with the system of reimbursement, rather than advancement, of expenses, which was applied in Austria.
26. The representative of the Government of Cuba supported the statement made on behalf of the GRULAC countries. In his view, the proposed amendments were based on subjectivity and limited the authority of governments under the ILO Constitution to decide on the nomination of delegates in consultation with employers' and workers' organizations. The proposed amendment also introduced a new supervisory mechanism over governments which were to be subject to such petitions, which could be lodged with few formalities.
27. The representative of the Government of Lebanon was of the view that, in case of any petition, the concerned government should be contacted urgently, not only in the cases referred to in paragraph 4 of the document. She also wondered what possible measures the Credentials Committee or the Officers of the Conference could take. As to the form annexed to the document, she believed there should be space for governments to explain why they could not provide full assistance.
28. The representative of the Government of the Bolivarian Republic of Venezuela stressed his Government's opposition to the point for decision and disagreed with amendments proposed in the document, which extended the mandate of the Credentials Committee. Cases that were not within the current jurisdiction of the Credentials Committee would fall within the remit of the ILO's supervisory bodies. He also considered it inappropriate for the Credentials Committee to refer a concrete case to the Officers of the Conference to take specific measures. His Government also disagreed with the form appended to the document which was not even submitted for decision to the Committee.
29. The representative of the Government of Nigeria, speaking on behalf of the Africa group, supported the point for decision. He emphasized that the proposals were intended to foster the duty and responsibility of a Member to ensure, in accordance with article 3(1) of the ILO Constitution, that four delegates, two of whom represented the social partners, attended the Conference with their travel and subsistence expenses paid by the Government. The proposed petition would address the non-performance of this constitutional obligation by some Members who prevented social partners from attending the Conference by deliberately placing obstacles in their way. It was correct to involve the Credentials Committee and the Officers of the Conference in reviewing such petitions and the procedure offered the government concerned the opportunity to comment on the allegations. Regarding the form appended to the document, a footnote should be added specifying which expenses had to be covered by the government, and the reference to partial payment should be deleted as that might encourage such payments.
30. The representative of the Government of Peru supported the statement made on behalf of GRULAC. While recognizing that it was fundamental to have all social partners represented at the Conference, he considered that the Office proposal raised two legal problems. Firstly, the proposed new subparagraph (c) of paragraph 2 of article 5 was too broad and needed to be re-examined since there could be legitimate reasons for preventing an accredited delegate from travelling outside the country, such as a court order or an expired passport. It should also be clarified that the government's act or omission needed

to be intentional. Secondly, paragraph 5 of the proposed new article 26quater(5) gave the Officers of the Conference such broad powers that they could infringe the concerned State's legal order, which was not acceptable. Some of the proposals could possibly be approved after further consultations on the matter.

31. The representative of the Government of Canada supported the point for decision in paragraph 8. However, the form annexed to the document needed more thought as it was so imprecise that the delegates themselves might not be able to answer the questions. In her country, for example, the Government agreed with the employers' and workers' organizations on the number of representatives whose attendance at the Conference would be financed by the Government and the corresponding amount was transferred to the organizations concerned. It was then for these organizations to choose their representatives and to reimburse them for their travel and subsistence expenses. The representatives concerned therefore did not necessarily know whether their expenses were ultimately covered by the government or their organization.
32. The representative of the Government of the United Republic of Tanzania, supporting the statement made on behalf of the Africa group, noted that paragraph 5 of the proposed new article 26quater gave the Officers of the Conference wide discretion as to the action they could take, and wondered whether it would be possible to establish a list of possible measures they could take. With respect to paragraph 7 of the proposed article 26quater, the speaker questioned how the Conference could arrive at a decision without discussing the matter.
33. The representative of the Government of South Africa supported the statement made on behalf of the Africa group and emphasized that it was a constitutional obligation for governments to ensure the attendance of Worker and Employer representatives at the Conference. A failure to do so would justify corrective action against the government concerned.
34. The Legal Adviser, taking note of the comments relating to the form in the appendix, recalled that the point for decision did not request its adoption. In his view, there was no need to insist on the use of the form, and work would continue with the groups to ensure the necessary support and find practical solutions, including through technological means. As to the amendment proposed at the beginning of the session, he clarified that the suggested change was necessary since the publication of names on the list of delegations was a legal act, whereas a concrete impediment to attendance at the Conference was a factual situation which might occur at any moment, and the capacity of the Credentials Committee to deal with such a petition would necessarily be limited by the time of its receipt. He clarified that the concept of "reasonable doubt" in the context before the Committee referred to the level of evidence presented and not to a level of scrutiny or judgement of a government's action. The scope of the petition extended only to lifting possible obstacles as to the attendance of an already accredited delegate and adviser. He also clarified that the expression "any action" that the Officers may take referred to a political dialogue and was obviously limited by their competence under Standing Orders. There was, therefore, no basis to envisage any abuse of their powers.
35. The Employer members considered that the legalistic position of the GRULAC governments appeared defensive and was not correct since all Members had the obligation to respect tripartism in relation to attendance at the Conference by virtue of their having adhered to the ILO Constitution. When such fundamental principles were at stake, regulation should be accepted. Examples of the problem under discussion were not so rare and had already been noted by the Credentials Committee. As to the form in the appendix, while noting that abuses remained possible in systems providing for reimbursement of already incurred expenses of the non-government representatives, such methods were

nonetheless acceptable when they resulted from an agreement between the Government and employers' and workers' organizations. They considered that the Committee had reached a consensus in favour of the proposed amendment, although it was regrettable that unanimity could not be achieved.

36. The Worker members observed that there must have been a misunderstanding about the risk of abuse under the proposed new procedure. They drew attention to the fact that the proposed petition procedure had many levels of safeguards, including the requirement to explain and substantiate the alleged obstacles to Conference attendance; the unanimity required within the Credentials Committee, which was tripartite in composition, to accept a petition as receivable; the opportunity for explanation by the government in case of reasonable doubt; and the intervention of the Officers of the Conference, also tripartite in composition. They recalled that the heart of the matter was to ensure adequate tripartite representation of all parties at the Conference.
37. The representative of the Government of Uruguay, speaking on behalf of the GRULAC governments, while reiterating opposition to the point for decision, agreed with many of the points made in the discussion, including those concerning the constitutional nature of the fundamental pillar of tripartism in the ILO and the need for tripartite participation and transparency. He believed that dialogue was needed and that a common position might then be achieved.
38. *In view of the discussion, the Committee recommends to the Governing Body to defer the item to its next session in November 2009, and to request the Office to conduct intense consultations on the basis of the document presented and the views expressed by the Committee in order to present a further document on the matter.*

III. Other legal issues (Third item on the agenda)

Compendium of rules applicable to the Governing Body: Proposals for revision, including to promote gender equality

39. The Committee had before it a document for decision¹⁰ concerning revisions to the *Compendium of rules applicable to the Governing Body* published in 2006.
40. The Legal Adviser explained that the *Compendium* had been developed at the request of the Governing Body in order to provide a ready reference source for use by members of the Governing Body. The compilation contained both procedures directly applicable to the Governing Body, and rules and decisions that it had taken concerning certain standing bodies which report to the Governing Body. This document sought to decide that texts already contained in the *Compendium* should be routinely updated as necessary by the Office, and that the Office should prepare a review of possible revisions to the Governing Body's own Standing Orders and Introductory Note in order to promote gender equality. It also provided an opportunity for the Committee to consider whether several other sets of rules should be added to the *Compendium*. The criteria guiding those proposals, which were used to develop the original *Compendium*, included selecting texts which: (1) had

¹⁰ GB.304/LILS/3/1.

been approved by the Governing Body; (2) related to matters for decision that regularly appeared on its agenda; (3) were not regularly reprinted in separate booklets; and (4) were not easily available on the web site without researching past decisions of the Governing Body. The recently revised *Rules for Regional Meetings*, for example, did not appear as a proposal since they were published separately for use in the field.

41. The Employer members, while supporting the point for decision, considered that the systematic update of the *Compendium* did not require an express decision of the Governing Body. With respect to paragraphs 6 and 7, it would be most appropriate to include the Standing Orders of the International Conference of Labour Statisticians and the decisions relating to meetings of experts in a new compendium of standing orders for ILO sectoral and expert meetings.
42. The Worker members, in supporting the point for decision, had no objections to including the various texts mentioned in paragraphs 6 and 7 in the next edition of the *Compendium*. They welcomed the updated print edition of the Constitution booklet, to include the resolutions of the Conference concerning privileges and immunities, and noted that the updated edition of the *Compendium* and its annexes would include the amendments already adopted to the existing texts. With regard to the correction noted in paragraph 5(a), they proposed that the title of Annex V be amended to also refer to employers' and workers' organizations as well as non-governmental international organizations, and any consequential amendments be considered. They strongly supported the revision of the texts in the *Compendium* to promote gender equality and looked forward to receiving the proposals at the Committee's next session.
43. The representative of the Government of India supported the point for decision and the changes proposed, including the revision to the Standing Orders of the Governing Body in relation to promoting gender equality. The *Compendium* was a very useful and valuable document for new as well as existing members of the Governing Body. While the texts should be updated in electronic form immediately after their revision, the print edition could follow at appropriate intervals.
44. The representative of the Government of Lebanon supported the amendment proposed by the Worker members since the term "non-governmental international organizations" referred to civil society and it would therefore be helpful to also refer to employers' and workers' organizations.
45. The representative of the Government of Austria supported the updating of the *Compendium* on a routine basis and as necessary. She would, however, prefer a lighter *Compendium* and would also appreciate a German version.
46. The representative of the Government of Uruguay, speaking on behalf of the GRULAC governments, supported the point for decision, and in particular the proposals relating to revisions to promote gender equality, which would also be coherent with the amendments made to the Standing Orders of the International Labour Conference. The updating of texts already contained in the *Compendium* was justified, and this could continue to be done, firstly to electronic versions and then to print editions. He looked forward to reviewing the more detailed proposals at the next sitting of the Committee.
47. The representative of the Government of Nigeria, speaking on behalf of the Africa group, supported the point for decision with the additional view that the reference in paragraph 7 to documents in the *Records of Decisions* should include vital decisions.
48. The Employer members supported the Workers' proposed amendment of Annex V to add a reference to workers' and employers' organizations.

49. The Legal Adviser noted the support expressed for the amendments proposed by the Workers to Annex V, not only to amend the title but also to consider any consequential amendments to the text. As regards the Employers' suggestion for another compendium of certain documents, it would be difficult to justify the cost of another publication. He explained that the rules for sectoral meetings had not been proposed in the document because their current status was unclear, while some considered them obsolete. A draft new *Compendium* would be presented to the Committee in November 2009 for its review, based on the views expressed and keeping the booklet as light as possible. He added that proposals to amend the Constitution to reflect gender equality could also be presented.

50. *The Committee recommends that the Governing Body:*

- (a) decide that, following any revision by the Governing Body or the Conference, texts in the Compendium of rules applicable to the Governing Body should be routinely updated by the Office, both electronically and, at appropriate intervals, in print; and***
- (b) request the Office, in light of the discussion in the Committee, to submit more detailed proposals to the next session of the Governing Body for possible improvements to the Compendium, including revisions to the Standing Orders of the Governing Body in relation to promoting gender equality.***

Geneva, 24 March 2009.

Points for decision: Paragraph 12;
Paragraph 19;
Paragraph 38;
Paragraph 50.

Appendix

Ad hoc arrangements for the discussion of the Global Report under the follow-up to the 1998 Declaration at the 98th Session of the International Labour Conference

Principle of the discussion

Having regard to the various options referred to in the annex to the Declaration, the Governing Body recommends that the Global Report submitted to the Conference by the Director-General should be dealt with by the Conference, separately from the Director-General's Reports under article 12 of the Conference Standing Orders.

Timing of the discussion

A maximum of two sittings on the same day should be convened for the thematic discussion of the Global Report, with the possibility, if necessary, of extending the sitting. In order to take account of the programme of work of the Conference and of the fact that a number of ministers who usually are present during the second week of the Conference may wish to take the floor, the discussion of the Global Report should be held during the second week of the Conference. The date will be determined by the Selection Committee.

Procedure for the discussion

The separate discussion of the Global Report recommended above implies in particular that the statements made during the discussion of the Global Report should not fall under the limitation concerning the number of statements by each speaker in plenary provided for in article 12, paragraph 3, of the Standing Orders, and that the discussion should not be governed by the provisions of article 14, paragraph 6, concerning the time limit for speeches. Furthermore, exchanges of views on the suggested points for thematic discussion should not be subject to the restrictions laid down in article 14, paragraph 2, concerning the order in which speakers are called. These provisions should accordingly be suspended under the procedure provided for in article 76 of the Standing Orders to the extent necessary for the discussion of the Global Report.

Organization of the discussion

Given that the thematic discussion is not intended to lead to the adoption of conclusions or decisions by the Conference, on the one hand, and in consideration of the abovementioned suspensions of the Standing Orders, on the other, the Selection Committee may decide that this discussion should be conducted as a plenary committee that can convene at the same time as the plenary and be chaired by one of the Officers of the Conference. Should the need arise, the Chairperson might be assisted by a moderator appointed by the Officers of the Conference.

Report to the plenary

The Chairperson of the plenary committee would present a short oral report to the plenary of the Conference and the thematic discussion would be reproduced in the *Provisional Record*.