



Governing Body

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Legal Issues and International Labour Standards Section
Legal Issues Segment

LILS

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SECOND ITEM ON THE AGENDA

Final provisions of international labour Conventions

Purpose of the document

In the present document, prepared at the request of the Committee on Domestic Workers at the 100th Session of the International Labour Conference, the Governing Body is invited to express its views on the approach that should be taken regarding the possible amendment of certain standard final provisions to be included in future international labour Conventions (see the point for discussion in paragraph 9).

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: No immediate implications.

Legal implications: No immediate implications.

Financial implications: None.

Follow-up action required: Depending on the outcome of the discussion, it may be necessary to submit a further document to a future session of the Governing Body.

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Related documents: GB.286/LILS/1/2; *Provisional Record* No. 15, International Labour Conference, 100th Session (2011).

I. Introduction

1. At the 100th Session of the International Labour Conference, a discussion took place in the Committee on Domestic Workers¹ regarding the final provisions of the proposed Convention, which became the Domestic Workers Convention, 2011 (No. 189). The Employers' group of the Committee had submitted a two-part motion. The first part concerned the provisions on the entry into force of the Convention. In particular, it proposed that the Convention should not enter into force until the ratifications of 18 Members had been registered by the Director-General, although the practice in the past had generally been to provide for entry into force after two ratifications. The second part of the motion concerned the denunciation of the Convention. It proposed to allow all member States that had ratified the Convention to denounce it at any time after an initial two-year period as of its initial entry into force, on the sole condition of submitting the instrument of denunciation a year before it becomes effective. The vast majority of international labour Conventions adopted in the past can only be denounced every ten years for a period of one year.
2. A number of Committee members considered that the Committee was not the appropriate place to discuss the issue of the final provisions of Conventions, and that it was instead a matter for the Governing Body. It was also suggested that the standard final provisions needed to be updated. The matter was therefore referred to the Governing Body.

II. The system of standard final provisions

3. The ILO Constitution does not contain any provisions regarding the entry into force and the denunciation of international labour Conventions. To ensure that Conventions are subject to a system that is as uniform as possible, the Conference adopted a set of standard final provisions that must be inserted into all new proposed Conventions by the Conference Drafting Committee.
4. The content of these final provisions, and particularly of those concerning the entry into force and the denunciation of Conventions, whose current form dates back to 1946, has subsequently given rise on a number of occasions to discussions in the Conference and in the Governing Body, most recently at the 286th Session (March 2003) of the Governing Body. On that occasion, a number of possible ways of amending the standard final provisions were discussed, but no consensus was reached in favour of any of them.² For the details of the background of each of the standard final provisions, their rationale, practice concerning their usage, the different parameters in the provisions that could be amended and the arguments for and against different amendments, please refer to document GB.286/LILS/1/2, which served as the basis for this discussion.

¹ ILO: *Provisional Record* No. 15, International Labour Conference, 100th Session, 2011, paras 763–786.

² See GB.286/13/1, paras 44–63.

5. The standard final provisions on the entry into force and denunciation of Conventions currently read as follows:³

Article B [entry into force]

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force [**twelve**] months after the date on which the ratifications of [**two**] Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member [**twelve**] months after the date on which its ratification is registered.

Article C [denunciation]

1. A Member which has ratified this Convention may denounce it after the expiration of [**ten**] years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until [**one** year] after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of [**ten**] years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of [**ten**] years and, thereafter, may denounce this Convention within the first year of each new period of [**ten**] years under the terms provided for in this Article.

6. The figures that appear above in bold and between square brackets reflect the practice for the implementation of these standard final provisions. When the Conference adopted the two standard articles in 1928, it left these values open. It considered that the provisions on entry into force and denunciation were substantive provisions that should be examined by each competent committee. It was the responsibility of that committee and, ultimately, of the Conference itself to establish their values.⁴
7. In practice, the final provisions have not always been automatically submitted to the committees for discussion; in most cases, they have been added to the text of the Convention by the Conference Drafting Committee, using the values indicated above. If a committee wishes to modify these values, it must take the matter up itself by adopting a motion. Before the Committee on Domestic Workers at the 100th Session of the Conference, it was the Committee on the Fishing Sector at the 93rd Session (2005) of the Conference that had last raised the matter of the final provisions. Following the proposal of a motion, the Committee adopted the principle that the Convention would enter into force after it had been ratified by ten member States, including at least eight coastal States.⁵ The provision then drafted by the Conference Drafting Committee is now found in Article 48, paragraph 2, of the Work in Fishing Convention, 2007 (No. 188).

³ See ILO: *Manual for drafting ILO instruments*, Office of the Legal Adviser (Geneva, 2006), para. 73.

⁴ ILO: *Record of proceedings*, International Labour Conference, 11th Session, Geneva, 1928, Vol. I, pp. 299–310 and 591–592.

⁵ *Provisional Record* No. 19, paras 662–673, International Labour Conference, 93rd Session, 2005.

8. Thus, the standard final provisions in paragraph 5 above are only binding upon the Conference as to their form. The open parameters, such as the number of ratifications required for the entry into force of a Convention and any qualifying conditions that may have to be met by the Members that ratify it, as well as the various time limits restricting the right of denunciation, continue to be under the control of the Conference at the time when it adopts a Convention. However, since these issues are not automatically referred to the technical committees that examine the proposed Conventions, and since they are usually not raised by committee members with a view to giving the Conference Drafting Committee different instructions, the final provisions are applied by default using the numerical values indicated above.

III. Possible approaches to the issue (point for discussion)

9. In the light of the above, the Governing Body may wish to consider one of the following approaches or a combination of them.
- (a) The Governing Body could, on the basis of its discussion of the matter, reaffirm the competence of the Conference and of its technical committees to address the issue of the final provisions every time it examines a proposed Convention and to give the Conference Drafting Committee instructions regarding the values it should apply to the open parameters in the standard provisions.
 - (b) The Governing Body could propose that the values to be applied to the open parameters in the final provisions be systematically referred to the Conference's competent technical committees in the Office report. This is the procedure that had been envisaged by the Standing Orders Committee in 1928,⁶ but which never appears to have been applied. The advantage of this approach is that it would allow the members of the Committee to prepare better for the discussion of the final provisions. The disadvantage is that it would prompt a discussion that the majority of the Committee may not necessarily welcome and it would further reduce the already limited time available to discuss the substantive provisions of the proposed Convention.
 - (c) The Governing Body could propose that the Conference modify for the future the default values established in practice for the open parameters of the standard provisions mentioned in paragraph 5, without making any further modifications to the drafting of these provisions. The Conference's decision would at the same time formalize the practice of using default values.
 - (d) The Governing Body could propose that the Conference proceed to an in-depth revision of the standard final provisions to be used in future Conventions, considering more than just the open parameters. As in the past, discussions could take place in the framework of a Standing Orders Committee of the Conference.

⁶ See note 3 above.