



Governing Body

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Legal Issues and International Labour Standards Section

LILS

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DRAFT MINUTES

Legal Issues and International Labour Standards Section

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1. The Legal Issues and International Labour Standards Section was held on Tuesday, 27 March 2012. It was chaired by Mr Corres (Government, Argentina). Mr Syder was the Employer spokesperson and the Worker Vice-Chairperson of the Governing Body, Mr Cortebeek, was the Worker spokesperson.

Legal Issues Segment

First item on the agenda

Legal protection of the International Labour Organization in its member States, including the status of its privileges and immunities (GB.313/LILS/1)

2. *The Worker Vice-Chairperson* commended the Office for its efforts to promote ratification of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and recalled the importance of that Convention in ensuring protection of the Organization and the effectiveness of its work. The Workers' group welcomed the accession of two new States to the Convention since March 2009. However, he regretted the lack of significant progress and expressed concern at the fact that 29 member States did not provide protection to the Organization. The Workers' group encouraged all member States to take the necessary steps to accede to the Convention or to multilateral and bilateral agreements. In addition, he highlighted the relevance of the measures taken by the Office to promote accession to the instruments on privileges and immunities, in particular the new booklet on legal protection of the ILO in its member States and the online database on the subject. With regard to the Framework Agreement for Cooperation (FAC), he recommended giving absolute priority to accession to the 1947 Convention and using the FAC only in cases in which objective considerations temporarily prevented accession to the Convention.
3. *Speaking on behalf of the Employers' group*, an Employer member noted that overall progress towards accession to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies was slow: only two countries had acceded to the Convention since 2009. She requested some clarifications on the measures taken by the Office. First, it was important to focus on the 29 member States that did not grant any legal protection to the ILO, and identifying those States would permit a better understanding of future promotional steps. In relation to the direct engagement with member States mentioned in the document, her group wished to know which 40 member States the Office had contacted, and in which of those countries the ILO had extensive activities. She also wished to know more about the reasons behind the obstacles to accession to the Convention or to the adoption of a bilateral agreement. In order for that information to be included in the next discussion of the subject, she proposed a revision for point 15(c) of the draft decision. With reference to the FAC contained in Appendix II to the document, the Employers' group wondered whether the FAC was intended to be a model for future bilateral agreements, whether it had already been submitted to any ILO member States, and whether reservations to some of the provisions would be accepted. In addition, she wished to know the differences between the protection afforded by the FAC and that provided by the 1947 Convention, as well as the relationship between the FAC, the standard technical assistance agreements (STAAs) and other bilateral agreements. Noting that there was no draft decision on the FAC, she asked the Office whether there should be one and what it intended to do with that model agreement. The Employers' group recognized that the new information resources could be effective tools to increase the general understanding of the

importance of the legal protection of the ILO, but wished to know their impact in addressing the obstacles to accession to the Convention. Lastly, the Employers' group again raised the issue of extension of privileges and immunities to the officials of the International Organisation of Employers (IOE) when performing their functions to obtain better conditions to pursue and realize their objectives. In that regard, the group stressed the fundamental role that the secretariats of employers and workers, in particular the IOE and the International Trade Union Confederation (ITUC), played in the ILO's institutional framework. The Employers' group requested that the Governing Body recognize the need for States to accept the importance of the role of both the IOE and the ITUC, which was in line with paragraphs 19 and 23 of the revised Introductory note to the Compendium of rules applicable to the Governing Body of the International Labour Office adopted in June 2011. The Employers' group secretariat was, from an institutional point of view, an integral part of the ILO, although, as a consequence of the fundamental principle of tripartism, it was an independent institution. In her view, tripartism implied that the three parties in the work process of the ILO could enjoy equal positions with respect to privileges and immunities to the extent necessary to carry out their tasks adequately. The employees of the IOE and ITUC were called upon to fulfil sensitive missions in member States and often to defend legitimate positions in conflict with those of national governments. For that reason, the Employers' group proposed a revision to point (c) of the draft decision, replacing the wording after the words "report periodically" with: "on the material obstacles to the accession to the 1947 Convention and Annex I; on the adoption and developments of bilateral agreements; on the measures to be taken in order to address material obstacles to the accession to the 1947 Convention and its Annex I and the bilateral agreements". In addition, the Employers' group proposed a new point 15(d) which read: "The Governing Body requests the Office to undertake an analysis of the question of immunities and privileges of the IOE and ITUC officials in the execution of their functions related to the ILO and to propose possible legal approaches at the Governing Body session in November 2013". With those two proposed amendments, the Employers' group supported the draft decision.

4. *Speaking on behalf of GRULAC*, a Government representative of Brazil, noting that the FAC was not submitted for approval, supported points (a) and (b) of the draft decision. He further clarified that his group's approval of point (c) did not mean approval of Appendix II as a fixed document. The group preferred to continue studying the FAC, as it had already found several ambiguities and wished to submit its suggestions for improvements. He believed that the FAC could not apply in countries which had not acceded to the Convention because of incompatibilities with national legislation and practice. In addition, in some of the articles of the FAC it appeared that the ILO could act unilaterally; in others, such as articles II, III, V, and VIII, the possibility was left open to implement the provisions as necessary. Article I, conversely, referred to the basic conditions for cooperation agreed between the ILO and the member State. Paragraphs 5 and 6 of Article XI seemed contradictory in so far as they referred to two different systems for continuation of obligations upon termination of the Agreement. With regard to point (c) of the draft decision, GRULAC noted the statement in paragraph 9 of the document that the Office would keep the FAC under review. With regard to the proposals of the Employers' group, he stressed that those types of proposals should be submitted sufficiently in advance to give the Governing Body members the possibility of consulting internally before deciding on them.
5. *A Government representative of Brazil*, endorsing the statement by GRULAC, reiterated his country's commitment to privileges and immunities and agreed with the need to reaffirm the importance of the legal protection of the ILO in its relations with member States, in line with points (a) and (b) of the draft decision. His delegation supported continuing promotion as mentioned in point (c) of the draft decision. Nevertheless, he

wished to recall that, based on the principle of the protection of workers, Brazilian labour courts had recognized the need to apply privileges and immunities in a flexible manner in situations in which the worker whose rights had been violated was left in a state of clear vulnerability without redress. The Brazilian judiciary had acted in that way in the past in view of the very principles and values of the ILO.

6. *A Government representative of Switzerland* recalled that her country had concluded a Headquarters Agreement with the ILO on 19 March 1946 which afforded the Organization privileges and immunities that were equivalent to those guaranteed by the 1947 Convention. That was why Switzerland was not a party to the Convention. However, her country was currently envisaging accession to the Convention.
7. *Speaking on behalf of the Africa group*, a Government representative of Angola recalled that, according to article 40 of the Constitution of the ILO, member States were required to recognize the privileges and immunities of the Organization. He acknowledged that the purpose of legal protection of the Organization in member States was to guarantee the independence of the Organization and its ability to provide its services efficiently, limiting the delays and costs entailed in financing and carrying out its activities. The Africa group proposed supporting the three points of the draft decision as set out in the document.
8. *A Government representative of Canada* reiterated that her country's Privileges and Immunities (International Labour Organization) Order granted adequate protection to the ILO, a view which it had affirmed during the previous discussion of the subject. In addition, Canada extended privileges and immunities to the ILO and its staff, to the delegates of member States attending ILO meetings in Canada and to ILO-designated experts on mission in Canada. Canada supported the draft decision and recommended that the FAC be targeted to countries that had not ratified the 1947 Convention and did not provide an equivalent level of protection.
9. *A representative of the Director-General* (the Legal Adviser) pointed out that the issue of recognition of privileges and immunities in member States was a broad one, and regularly gave rise to problems. He explained that the priority for the Office was member States that had not acceded to the Convention. They included States which refused accession as a matter of principle, and it was those States which posed a problem that was particularly difficult to solve, and for which the Office needed assistance from member States. The second category consisted of States that had lodged instruments of accession, while expressing reservations which related to essential points and had therefore been rejected by the ILO and other organizations. That second category of States required a joint effort with other United Nations organizations in order to understand the reasons for the reservations and encourage States to withdraw them, where possible. With regard to the FAC, the Office was not asking the Governing Body to adopt it, as its content was not fixed, but was subject to discussions on a case by case basis, bearing in mind that certain points were essential and should be included without fail. With regard to the FAC and the 1947 Convention, the main difference between the two was that the FAC was a bilateral instrument enabling the ILO and its officials to enjoy the guarantees provided by the Convention, but was much broader in scope as it also covered other matters such as intellectual property, dependants and information concerning cooperation activities. Where an FAC had been concluded in a country in which an STAA was already in force, the FAC replaced the STAA on all common points, but the other points of the STAA remained in force. Lastly, with regard to privileges and immunities for employers' and workers' organizations, the Legal Adviser proposed undertaking clarification of the legal aspects of the matter in consultation with the parties concerned.

10. *The Worker Vice-Chairperson* noted with satisfaction the forthcoming ratification of the 1947 Convention by Switzerland and agreed with point (d) of the draft decision proposed by the Employers. However, the Workers' group did not agree with the proposed amendment to point (c) as it was too detailed.
11. *Speaking on behalf of GRULAC*, a Government representative of Brazil, following a brief consultation among the members of the group, suggested a subamendment to the Employer group's amendment to point 15(d), which replaced the words "in the execution of their functions related to the ILO" with the words "in the context of the 1947 Convention and Annex I, in the execution of official missions of the ILO defined in a tripartite manner". He noted the need to review the Governing Body procedure for adoption of amendments, since there should have been more time to discuss the amendment proposed by the Employers.
12. *Speaking on behalf of the Employers' group*, an Employer member requested the Office for advice on the subamendment wording proposed by GRULAC to point 15(d), in consideration of the fact that it was the members of the secretariats of the IOE and the ITUC who went on mission and who needed to be protected, not the secretariats themselves.
13. *The representative of the Director-General* (the Legal Adviser) stated that what the Office was being asked to do was to verify the status, in the context of the 1947 Convention, of officials of the IOE and ITUC while carrying out official missions of the ILO defined in a tripartite manner. That wording summed up the role of group secretariats fulfilled by the IOE and the ITUC during official ILO meetings and reflected the fact that the two non-governmental organizations acted as secretariats. That was the current meaning of the text, and if it corresponded to what the delegations wanted it to mean, the text could be maintained.
14. *Speaking on behalf of the Employers' group*, an Employer member confirmed that her group supported the meaning of the text as explained by the Legal Adviser and requested that the Office align the translations. The group thus agreed with the subamendment to its amendment to point 15(d), and also agreed to withdraw its amendment to point 15(c).

Decision

15. The Governing Body:

- (a) *reaffirmed the importance of legal protection for the ILO in its relations with member States, and in particular its privileges and immunities recognized in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and Annex I relating to the ILO;*
- (b) *urged member States which have yet to do so, to accede to the 1947 Convention and apply its Annex I;*
- (c) *requested the Office to continue its efforts to promote the legal protection of the ILO through the measures indicated, and to report periodically on the legal situation of the ILO in its member States, with a view to taking further measures as necessary;*
- (d) *requested the Office to undertake an analysis of the question of immunities and privileges for officials of the International Organisation of Employers*

(IOE) and the International Trade Union Confederation (ITUC), in the context of the abovementioned Convention and Annex I, in the execution of official missions of the ILO defined in a tripartite manner, and to propose possible legal approaches at the November 2013 session of the Governing Body.

(GB.313/LILS/1, paragraph 15, as amended.)

Second item on the agenda

Final provisions of international labour Conventions

(GB.313/LILS/2)

16. *A representative of the Director-General* (the Legal Adviser) emphasized that the four approaches to the final provisions of international labour Conventions suggested in paragraph 9 of the document did not exclude any other approaches that the Governing Body members might wish to propose.
17. *The Employer spokesperson* considered that a comprehensive discussion of the subject was of the utmost importance to maintain a robust body of up-to-date international labour standards that responded to the needs of the world of work. The proper place to examine the question of the final provisions was therefore in the context of the ongoing Governing Body discussions on a future standards review mechanism. His group proposed that the issue be postponed to the November 2012 session of the Governing Body, pending tripartite consultations concerning the modalities of the standards review mechanism.
18. *The Worker Vice-Chairperson* asserted that the final provisions issue formed part of standards policy as it was closely linked to the question of new approaches to international labour standard setting. It should therefore be included in the wider discussion on standards policy and could not be dealt with in isolation. His group proposed to evaluate further developments in that wider discussion in order to decide when to come back to the issue of the final provisions.
19. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of Canada was satisfied with the current final provisions and practice, as reflected in paragraph 9(a) of the document, since such practice provided stability and the necessary flexibility. The practice of having the Conference Drafting Committee insert the final clauses with identical values into proposed Conventions should be maintained. While strengthening the coherence of the body of international labour standards and facilitating its legibility, it also avoided a discussion of the final provisions by the technical committees of the Conference, whose workload was already considerable. Those committees should make a restrictive use of their power to adopt different values for the open parameters of certain final provisions. Higher thresholds for the entry into force of a Convention should be used only where justified by the reciprocal character of the obligations. However, IMEC also noted that since the parameters in the articles on entry into force and denunciation of the Convention dated back to 1928, it could be appropriate to re-examine them from the perspective of improving ILO standards-related activities, taking into account the goal of wide ratification of the Conventions. IMEC was aware that that required in-depth discussions following the approach outlined in paragraph 9(d) of the document, which could be successful only if there was initial consensus to move in that direction.

- 20.** *Speaking on behalf of GRULAC*, a Government representative of Brazil noted that, while the document referred to the practice of not submitting the question of the final provisions of a Convention to the technical committees, it also mentioned recent examples where the parameters concerning entry into force and denunciation of a Convention had been discussed by the competent committee. While it was a simple and practical solution to let the Conference Drafting Committee deal with the inclusion of the final provisions, the provisions on entry into force and denunciation were closely linked to the substance of the Convention under development, as illustrated, for example, by Conventions Nos 31, 46 and 110. Therefore, his group wished to maintain the possibility for the technical committee dealing with the substance of a Convention to determine the figures for entry into force and time limits for denunciation. The favoured approach was a combination of those outlined in paragraph 9(a) and (b) of the document. Finally, in connection with the standard final Article B, referring to the registration of ratifications with the Director-General, the group stressed that that function had to be discharged in full compliance with the provisions of the Vienna Convention on the Law of Treaties and no incompatible practice could be accepted.
- 21.** *Speaking on behalf of the Africa group*, a Government representative of Angola wished the Governing Body to propose to the Conference a more substantial revision of the final provisions to be used in future Conventions, so that such a proposal could be discussed by the competent committee of the Conference.
- 22.** *Speaking also on behalf of the Government of Denmark, a Government representative of Switzerland* believed it was essential to avoid having different final provisions proposed for different Conventions at each session of the Conference. A more substantial revision of the final provisions, as suggested in paragraph 9(d) of the document, could therefore be envisaged. Such revision would ensure legal certainty and the proper functioning of the supervisory system and would result in a new consensual global solution. The question should be included in the discussions on the future standards review mechanism. At the same time, the possibility of adopting special systems, such as the ones in the Work in Fishing Convention, 2007 (No. 188), and in the Maritime Labour Convention, 2006, should remain.
- 23.** *A Government representative of India* indicated that his Government was open to discussing, as a matter of improvement in standard-setting activities, the proposal made by the Employers' group at the 100th Session (2011) of the Conference, according to which 18 ratifications would be required for a Convention to come into force. As the standard final provisions in their current form dated back to 1946, there was a need to make them more flexible to better suit developing countries, while their core structure could be kept intact. He supported the approaches outlined in paragraph 9(a) and (b) of the document.
- 24.** *A Government representative of China* noted that the final provisions currently in use dated back more than half a century, during which the ILO had witnessed a sharp increase in its membership as well as the rise of economic globalization, which had resulted in considerable changes in the world of work. Against that background, the conditions for denunciation of a Convention now appeared overly strict, discouraging wider ratification, while the conditions for entry into force seemed so loose that they weakened the authority of the Conventions. He invited the Office to carry out an in-depth analysis, resorting to all available expertise, and to make proposals allowing the Governing Body to take the necessary decisions at an upcoming session.

25. *A Government representative of Australia* agreed with the Workers and the Employers that the final provisions of the Conventions could not be discussed in isolation from other improvements in ILO standards policy before the Governing Body, namely, the standards review mechanism, which included new approaches to standard setting and consideration of means for the preparation and adoption of standards. The possibility for technical committees of the Conference to also consider the final provisions of the Conventions under development was important to ensure that the Conventions adopted were robust and able to be ratified. However, it was equally important to ensure consistency and comparability across the international labour code, and the provision of default values that could be flexibly applied to suit atypical situations provided a strong foundation for such a result. The capacity for ILO Conventions to be ratified and to come into force was considered to be an integral aspect of the realization of decent work for all.
26. *The representative of the Director-General* (the Legal Adviser), summarizing the debate, noted the views of members relating to the need to adapt the current system and, at the same time, preserve the coherence of the system of final clauses and of the standards system as a whole, while keeping the flexibility needed to accommodate the specific features of certain Conventions. Those ideas would be taken up during discussion of the question in connection with the standards review mechanism to be examined at the November 2012 session of the Governing Body.
27. *The Worker Vice-Chairperson* made it clear that, while his group had agreed to link the issue of the final provisions to the question of the standards review mechanism, it had not supported any change to the existing system of final provisions.

Outcome

28. *The Governing Body took note of the document and invited the Office to take into account the views expressed during its discussion concerning the final provisions of international labour Conventions.*

Third item on the agenda

Standing Orders of the Special Tripartite Committee established to give effect to Article XIII of the Maritime Labour Convention, 2006 (GB.313/LILS/3)

29. *A representative of the Director-General* (the Legal Adviser) recalled that the Maritime Labour Convention, 2006 (MLC, 2006), provided for the establishment of a particular body, a Special Tripartite Committee, which would be required to carry out certain tasks relating to the application of the Convention. In order for the Committee to function, it had been necessary to draw up its Standing Orders, which had been drafted at two meetings of a preparatory tripartite committee. The Office had opted to add an Introductory note to the draft Standing Orders.
30. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) indicated that governments and their social partners had made tremendous progress in ratification and effective implementation of the ground-breaking MLC, 2006. To date, that Convention had been ratified by 25 member States and one non-member State which was due to become a member State in order to enable registration of

the instrument. Those 25 ratifications represented more than 56 per cent of the world's fleet. In addition, the approach adopted by the Office with regard to the MLC, 2006, was singularly different from that taken with regard to other ILO Conventions. A very important technical assistance and technical cooperation programme supported its effective implementation. With data systems, the Office had already facilitated the undertaking of legislative gap analysis by more than 50 countries, particularly developing countries. Capacity building and training were also organized through the Maritime Labour Academy at the Turin Centre. The Office had prepared a number of tools including a handbook on model provisions, a handbook on implementing the social security provisions of the MLC, 2006, a revised question and answer handbook, and a revised "frequently asked questions" booklet; in addition, it was currently preparing a handbook on maritime occupational safety and health. She expressed her appreciation to the Governments of Sweden, Italy, United Kingdom and Australia for their continued support in that regard. All of those tools, together with a dedicated website relating to the Convention, provided the maximum amount of information and advice needed. Many of the provisions dealt with by the Standing Orders were in the final provisions of the MLC, 2006.

31. *Speaking on behalf of the Employers' group*, an Employer, supporting the draft decision, expressed the group's appreciation of the way in which the activities relating to the upcoming entry into force of the MLC, 2006, were being carried out and of the work of the Preparatory Tripartite MLC, 2006, Committee. The preparatory meetings showed that excellent results could be reached in a climate of dialogue and consultation when all relevant parties worked together to enable the Convention to start functioning properly following entry into force. The Standing Orders under consideration currently reflected the decisions agreed during the preparatory meetings. Her group welcomed the clarity of the Introductory note, which summarized and reproduced some of the provisions of the Standing Orders, and agreed to its adoption on the understanding that the note had been added further to a request for clarification during the preparatory meetings.
32. *The Worker Vice-Chairperson* emphasized that the Standing Orders were the result of detailed consultations among the governments and social partners concerned. The group supported the draft decision and, welcoming the progress made in the number of ratifications, hoped that the Convention, which was of great importance, would soon come into force.
33. *Speaking on behalf of the Africa group*, a Government representative of Angola, supporting the draft decision, noted that the adoption of the Standing Orders of the Committee by the Governing Body was one of the measures needed to give effect to Article XIII of the MLC, 2006. The Africa group also thanked the member States which had already ratified the MLC, 2006, and invited all the other member States to join them in undertaking national ratification procedures.
34. *A Government representative of the United States* thanked the Office for the excellent work done over the years with regard to the innovative MLC, 2006, and fully supported the adoption of the Standing Orders and accompanying Introductory note. Her Government, however, wanted to clarify and reaffirm, notwithstanding the language of article 9(2) of the draft Standing Orders, that the mandate of the MLC Committee should be limited solely to matters related to the MLC, 2006. The United States Coast Guard, in cooperation with all the relevant agencies, was currently conducting a detailed analysis of the MLC, 2006, in order to determine whether any obstacles existed to ratification by the United States, and the assistance of the Office was appreciated in that regard.
35. *A Government representative of Switzerland* affirmed that the text faithfully reflected the discussions which had taken place in December 2011, in which the Swiss social partners of

the sector had taken part. Indeed, Switzerland had ratified the MLC, 2006, in February 2011. Switzerland supported the draft decision but wished to emphasize a particular point. In the light of the modalities established in article 4 of the Standing Orders concerning the composition of the committee, it would be wise to avoid setting up too large a body. The intention was currently to have four persons for each ratifying State. In view of the growing number of ratifications, it would mean having to work within a committee that might consist of several hundred members. The initial idea for the committee had been to limit the number of participants for reasons of efficiency. Her delegation preferred a smaller, more operational body, and otherwise her Government hoped that the subsidiary bodies provided for in article 15 of the Standing Orders could compensate for that. Since the implementation of the MLC, 2006, would certainly raise many issues relating to application, the effectiveness and working capacity of the committee were of prime importance.

- 36.** *A Government representative of Japan*, supporting the draft decision, stated that the MLC, 2006, contributed to the improvement of the working environment for seafarers by establishing international labour standards, and ensuring a level playing field in maritime industries through fair competition and other standards. His Government fully recognized the importance of the Convention and was proceeding with preparations for its ratification. The draft amendments necessary for its ratification had been submitted to the National Diet in late February, and in early March a cabinet decision had been made to request the approval of the Diet to ratify the Convention. After the approval by the Diet and the passage of any amendments concerned, the Government would deposit its ratification as soon as possible.
- 37.** *A Government representative of China*, supporting the draft decision, appreciated the ILO's work in safeguarding the rights and interests of maritime labour, particularly the positive role and effective work in drafting the Convention and promoting its entry into force. Improving the professional competence of maritime workers and safeguarding their legitimate rights and interests were the foundations for sustainable development of a maritime industry in which China was a major power. His Government had always put people first and had adopted multiple approaches in legislation to promote the employment of seafarers and the protection of their rights and interests. The Government of China was ready to work with the stakeholders to promote the ratification and implementation of the MLC, 2006. A fair, rational and professional dialogue mechanism and standing orders could help promote the improvement and implementation of the Convention and reach its ultimate goals.
- 38.** *A Government representative of Denmark* stated that Denmark had continuously participated in the work involving the MLC, 2006, and its representatives had attended the Second Meeting of the Preparatory Tripartite MLC, 2006, Committee in December 2011, when Denmark had chaired the Government group. Denmark had ratified the Convention on 23 June 2011 and supported the adoption of the Standing Orders, including the proposed adjustments and the Introductory note.
- 39.** *A Government representative of France* expressed his great appreciation of the added value of the Introductory note and suggested that that method should be extended to other subjects, where appropriate. He indicated agreement with the draft Standing Orders, firstly because they accurately reflected the collaboration and consultation that had taken place, and secondly because they were essential to the functioning of a key component of the mechanism to ensure the ongoing implementation of the Convention. Lastly, he affirmed that a highly complex parliamentary process, with many preparatory phases, had reached the final stage as the draft legislation for the ratification of the Convention was currently before Parliament.

40. *A Government representative of Italy*, supporting the draft decision, noted with satisfaction the results achieved by the Preparatory Tripartite MLC, 2006, Committee, and the tripartite consensus reached at the December 2011 meeting concerning the text of the draft Standing Orders. With regard to the additional changes to the text of the Standing Orders, his delegation agreed with the proposal. The ratification process was still under way, and the Government was making every effort to be able to ratify the Convention at the end of 2012. It was currently bringing the national legislation into line with the provisions of the Convention prior to ratification. The Ministry of Transport had established a Tripartite National Maritime Committee in order to ensure collaboration between the Government and the social partners and maximum transparency in the process of application of the Convention.

Decision

41. *The Governing Body:*

- (a) *adopted the Introductory note to the Standing Orders of the Special Tripartite Committee established for the Maritime Labour Convention, 2006, as proposed in Appendix I of document GB.313/LILS/3;*
- (b) *adopted the abovementioned Standing Orders as proposed in Appendix II of document GB.313/LILS/3;*
- (c) *expressed its appreciation to member States which had already ratified the Maritime Labour Convention, 2006, and invited all other member States to accelerate their national processes aimed at ratifying it.*

(GB.313/LILS/3, paragraph 10, as amended.)

Fourth item on the agenda

Standing Orders of the International Labour Conference: Amendments relating to the reform of the Governing Body

(GB.313/LILS/4)

- 42. *The Worker Vice-Chairperson* endorsed the draft decision, and stated that the consultations by the Chairperson of the Governing Body to which article 18 referred should take place as swiftly as possible in order to avoid delays in the decision-making process.
- 43. *The Employer spokesperson* agreed with the draft decision.
- 44. *Speaking on behalf of the Africa group*, a Government representative of Angola supported the draft decision, acknowledging the efforts of the Office to address the concerns that the Government group had voiced at the previous session of the Governing Body.
- 45. *Speaking on behalf of the Government group*, a Government representative of Sudan welcomed the new proposals which had been prepared following consultations with the Government group. Supporting the draft decision, he conveyed the group's commitment to complying with the new working procedures, which included a strong involvement of the

Government group. The group looked forward to cooperating with the Chairperson of the Governing Body in that regard following adoption of the amendments by the Conference.

Decision

46. The Governing Body:

- (a) invited the International Labour Conference, at its 101st Session (June 2012), to approve the amendments to article 18 of the Standing Orders of the International Labour Conference proposed in Appendix I of document GB.313/LILS/4;*
- (b) approved the amendment to paragraph 21 of the Introductory note to the Compendium of rules applicable to the Governing Body proposed in Appendix II of document GB.313/LILS/4.*

(GB.313/LILS/4, paragraph 5, as amended.)

International Labour Standards and Human Rights Segment

Fifth item on the agenda

Improvements in the standards-related activities of the ILO: ILO standards policy: The establishment and the implementation of a standards review mechanism

(GB.313/LILS/5)

47. *A representative of the Director-General (Director, International Labour Standards Department (NORMES)) noted that, although no substantive paper had been submitted on the item, the Office had prepared, following consultations with the groups, a draft decision for the consideration of the Governing Body. She stated that, although there had been a clear acknowledgment at the 312th Session (November 2011) of the Governing Body of the critical importance of the ILO standards policy and the proposed standards review mechanism (SRM), it had also been obvious that there was a need to build confidence among the tripartite constituents in order to engage substantively in the options and modalities contained in the document submitted to that session of the Governing Body.¹ She noted that, in agreeing to the establishment of an SRM, the Governing Body had invited the Office to engage in consultations on modalities and to make a proposal in that regard during the March 2012 session. The Office had therefore arranged for informal consultations to be held with the Employers' and Workers' groups. The regional coordinators and, separately, representatives of the group of industrialized market economy countries (IMEC) and the European Union had been informed of the consultations that had taken place. She stressed that the consultations had been designed to build trust and confidence in the process so that, once substantive discussions began, the tripartite constituents would have a shared understanding of, and commitment to, the*

¹ See GB.312/LILS/5.

objectives and key principles. From the Office's perspective, the confidence-building process had been promising, and discussions had paved the way for further in-depth tripartite consultations on substantive issues relating to the SRM, as well as for further discussions in the Governing Body, which it was hoped would take place as of November 2012. The SRM would play a crucial role in establishing a clear, robust and up-to-date body of standards. Within the framework of the ILO Declaration on Social Justice for a Fair Globalization, 2008, the SRM would contribute to ensuring that international labour standards played a full and effective role in achieving the constitutional objectives of the Organization. The coordination of the SRM with other important processes, such as the recurrent discussions and the setting of the Conference agenda, would be a key prerequisite to achieving optimum results. In that context, the aim of the current and further consultations should be to enable the Office to prepare a paper for the November 2012 session of the Governing Body, resulting in full ownership by the tripartite constituents. That was of critical importance and provided the rationale for the continuation of the consultations.

- 48.** *The Employer spokesperson* recalled that, in November 2011, the Governing Body had taken a major decision concerning the creation of the SRM. It had established a means to respond to the expectations set out in the ILO Declaration on Social Justice for a Fair Globalization and to those concerning the role of the ILO in setting relevant international labour standards relating to the real world of work. His group took the issue seriously and, therefore, since November 2011, had been reaching out to the Workers' group to build trust and confidence. Significant steps had been taken since then to create an understanding between the Employers' group and the Workers' group, including an agreement on common principles, which the two groups jointly put forward to governments as a tripartite basis on which to move forward. The Employers' group firmly believed that there was a need for a clear, robust and up-to-date body of standards for the purpose of protecting workers, taking into account the needs of sustainable enterprises, and that a coherent policy framework was necessary to achieve such a goal. The Employers firmly supported continuing consultations so that a proposal could be made to the Governing Body in November 2012 on the options set out in document GB.312/LILS/5.
- 49.** *The Worker Vice-Chairperson* agreed that it was important to continue consultations and that trust and confidence were essential. He referred to the common principles agreed between the Employers' group and the Workers' group, which emphasized the need for: (1) policy coherence in the context of the ILO Declaration on Social Justice for a Fair Globalization; (2) a clear, robust and up-to-date body of standards for the purpose of protecting workers, taking into account the needs of sustainable enterprises; (3) the adoption of decisions by consensus and, in the absence of consensus, existing decisions should remain in place; (4) negotiations in good faith leading to a clear, robust and up-to-date body of standards; and (5) agreement among the social partners to implement those commitments. Those common principles constituted a good start and it was important to work on them with the Governments.
- 50.** *Speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC)*, a Government representative of Brazil wished to clarify that the meeting held at the beginning of March with the regional coordinators had been an information session on the progress achieved in building basic trust among social partners and could not be described as an actual consultation. He indicated that the fundamental position of GRULAC was clear and had been set out in detail during the November 2011 session of the Governing Body. GRULAC was always willing to participate in any consultations that may prove necessary.

51. *Speaking on behalf of IMEC*, a Government representative of Canada said that her group understood that the consultations undertaken between November 2011 and March 2012 had not developed into in-depth discussions on the modalities and that more time was needed. IMEC fully supported the Governing Body's decision of November 2011 to establish the SRM and agreed that further consultations should be held prior to the November 2012 session of the Governing Body. Those consultations should include all the groups and be planned and announced in due time so that governments could make arrangements for their proper representation. An alternative would be to hold written tripartite consultations. The modalities of the SRM needed to be developed on the basis of a number of fundamental considerations, namely: all parties must have full confidence in the SRM; the importance of consensus, clarity, transparency and consistency must be taken into account; the mechanism must be flexible, regularly evaluated and adjusted as necessary; and emphasis must be given to the importance of having clear understanding of the distinct roles and strengths that all the relevant mechanisms and processes (SRM, recurrent discussions, and the Conference) brought to the overall goal of improving ILO standards-related activities. IMEC supported the draft decision.
52. *Speaking on behalf of the Africa group*, a Government representative of Botswana noted that the Office had initiated consultations and, although progress had been made, the Office and the constituents considered that further consultations were necessary before the Office would be in a position to present a new document to the Governing Body for examination. The group urged the Office to continue consultations, including on the modalities of the SRM, and to make a proposal to the Governing Body in November 2012. It supported the draft decision.
53. *A Government representative of Australia* supported the statement made by IMEC. She expressed the hope that the ongoing consultations would result in the approval of the SRM by the Governing Body in November 2012, which was fundamentally important. A critical aspect was ensuring that all constituents had the confidence, trust and collaborative spirit to move forward. She referred to the importance of building consensus to create real and lasting change in the world of work, which was at the heart of the ILO and could be accomplished by the SRM.
54. *The representative of the Director-General* reiterated that the consultations held so far had not addressed the substance of the SRM, but had focused on purely procedural and confidence-building measures. She reaffirmed the Office's commitment to organizing tripartite consultations in a timely manner in order to receive the best input possible and to prepare a document that would meet the constituents' expectations.

Decision

55. ***The Governing Body invited the Office to continue the consultations already begun, including on the modalities of the standards review mechanism, and to make a proposal to the Governing Body at its 316th Session (November 2012) on the options set out in GB.312/LILS/5, bearing in mind the views expressed by the Governing Body members under this agenda item.***

(GB.313/LILS/5, paragraph 3.)

Sixth item on the agenda

Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2013 (GB.313/LILS/6)

56. *A representative of the Director-General* (Director, NORMES) recalled that it was the responsibility of the Office to propose the report form for the preparation of a General Survey, which was a report by the Committee of Experts on the Application of Conventions and Recommendations reviewing the law and practice of member States concerning the instrument(s) selected by the Governing Body. In the context of the ILO Declaration on Social Justice for a Fair Globalization, a decision had been taken to align the topic of General Surveys with the subject of the recurrent discussions held each year by the International Labour Conference. There had already been two such discussions, one on the strategic objective of employment and the other on the strategic objective of social protection (social security). The Governing Body was currently being invited to decide on the topic of the General Survey to be prepared by the Committee of Experts in 2013 for discussion by the International Labour Conference in 2014, one year before the recurrent discussion on labour protection scheduled for June 2015. She recalled, in that respect, that in reviewing the functioning of the recurrent discussions, the Steering Group on the Follow-up to the ILO Declaration on Social Justice for a Fair Globalization had concluded that it would be more effective if the General Survey was examined and discussed by the Conference one year before the recurrent discussion, as that would permit the report for the recurrent discussion to take into account the General Survey and the comments of the Conference Committee on the Application of Standards in that regard. Different views had been expressed as to how broad or narrow the range of the Conventions selected for General Surveys should be, and several General Surveys on wages and working time had been prepared in recent years. The Office thought, however, that because of the topicality of the question of minimum wage fixing, and taking also into account that the last General Survey on that topic had been discussed in 1992, that issue would be appropriate for consideration.
57. *The Worker Vice-Chairperson* supported the idea that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion on the corresponding strategic objective, in order to facilitate better integration of the standards-related aspects into the discussion. He supported the proposal to undertake a General Survey on social protection (labour protection) and, in particular, on the Minimum Wage Fixing Convention, 1970 (No. 131), and Recommendation, 1970 (No. 135). The issue of wages was a central concern for the Workers and its importance had been underlined recently by the ILO Declaration on Social Justice for a Fair Globalization and the Global Jobs Pact and emphasized by the Committee of Experts on the Application of Conventions and Recommendations. The issue was also of great importance in combating precarious employment. Even though links existed among the various Conventions relating to wages, the targeted approach proposed by the Office would enable the Committee of Experts to focus on Convention No. 131 and Recommendation No. 135, which had not been the subject of a General Survey for 20 years. In conclusion, the speaker supported the draft decision.
58. *The Employer spokesperson* agreed with the selection of the Minimum Wage Fixing Convention, 1970 (No. 131), and Recommendation, 1970 (No. 135) for the purposes of the General Survey to be examined by the International Labour Conference in 2014. He welcomed the fact that the proposed General Survey would cover a small number of

instruments, as that would allow for thorough analysis. He also agreed that a General Survey on Convention No. 131 would be timely, as the last General Survey on that topic had been prepared 20 years ago. However, agreement on the selection of those instruments should not be taken to mean approval of those standards as being up to date, responding to the needs of workers or taking into account the needs of sustainable enterprises. In the Employers' view, all ILO standards that were not obsolete should occasionally be the subject of General Surveys; General Surveys had a primarily technical function but were not instruments to promote individual standards. With regard to the draft report form, he referred to the scope of the reporting obligation set out in article 19 of the ILO Constitution and indicated that only questions falling squarely within the limits of that constitutional obligation should be included in the report form. The Employers felt that the current draft report form did not fully meet that requirement and needed to be reviewed. The speaker accordingly proposed an amendment to the second point of the draft decision, to read: "Against this background, the Governing Body invites the Office to organize consultations between the constituents and to report on the report form concerning minimum wage fixing instruments referred to in the appendix at its June 2012 Governing Body discussion."

59. *Speaking on behalf of IMEC*, a Government representative of Canada recalled that IMEC had always supported the realignment of the reporting cycle of the General Surveys so that they would be examined by the Committee on the Application of Standards one year before the respective recurrent discussion. It was for that reason that IMEC had proposed skipping the General Survey on employment for 2014, in order to report for the General Survey on labour protection in 2013 and to discuss that survey at the Committee on the Application of Standards in 2014 with the respective recurrent discussion taking place in 2015. Concentrating on two instruments would allow for an in-depth examination. As to the selection of instruments, IMEC members would express their views separately.
60. *Speaking on behalf of the Africa group*, a Government representative of Botswana acknowledged that the General Survey was an important source of information on law and practice. He agreed with the proposal to select a theme one year in advance of the discussion to facilitate better consideration of standards, and also agreed with the proposal that the General Survey to be discussed in June 2014 should cover the theme of labour protection, focusing on wages-related instruments in view of the need to maintain decent wage levels in the context of the global economic crisis. He expressed support for the draft decision.
61. *A Government representative of the United States* expressed support for the statement by IMEC regarding the new alignment of the General Surveys and the recurrent discussions. She also supported the choice of the minimum wage fixing instruments for article 19 reporting in 2013. The second question in part III of the draft report form went beyond that narrow focus of the instruments in question and, while some abusive pay practices, such as recourse to undeclared wages, were linked to minimum wage fixing, the other issues clearly related to the Protection of Wages Convention, 1949 (No. 95) and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173). The report form should maintain a narrow focus.
62. *A Government representative of Italy*, recognizing the importance of General Surveys in providing extensive information on the law and practice of member States, as well as on any impediments to the ratification of the Conventions under examination, endorsed the statement made on behalf of IMEC and, in particular, the related proposal for the Conference Committee on the Application of Standards to examine the General Surveys one year before the respective recurrent discussion took place. He also endorsed the Office's proposal that the General Survey to be discussed at the International Labour

Conference in 2014 should address the instruments relating to minimum wages and concluded by expressing his support for the draft decision.

63. *A Government representative of Switzerland* said that the General Survey to be reviewed by the Conference at its June 2014 session should be on the topic of social protection (labour protection). However, in the context of the operational follow-up to the ILO Declaration on Social Justice for a Fair Globalization, General Surveys should deal with specific themes and no longer with a single instrument. Consequently, and contrary to the proposal from the Office to limit the General Survey to instruments relating to minimum wages, the speaker proposed that other instruments, relating to occupational safety and health or hours of work, should not be excluded, and that the draft decision should be amended accordingly.
64. *A Government representative of Canada* supported the statement made on behalf of IMEC and the choice of the two minimum wage fixing instruments for the article 19 report for 2013. However, she shared the views of the Employers' group with respect to the scope of certain questions in the proposed report form that went beyond the provisions of the instruments in question and supported the Employers' proposed amendment to the draft decision.
65. *A Government representative of India* expressed his approval of the draft report form and the draft decision.
66. *The representative of the Director-General* clarified that, even if the General Survey was to be limited to the question of minimum wage fixing, that would not have an impact on the scope of the recurrent discussion, which would still cover labour protection in general.
67. *The Worker Vice-Chairperson* said that the follow-up to the ILO Declaration on Social Justice for a Fair Globalization referred explicitly to the possible need for some adaptation of the modalities for the application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, the aim being to collect useful information with a view to the recurrent discussion. He expressed his disagreement with the highly restrictive approach followed by the Employers' group with regard to the scope of the General Survey and wished to know precisely what kind of questions the Employers considered unhelpful.
68. *The Employer spokesperson* referred to the need to take the ILO Declaration on Social Justice for a Fair Globalization into account. He shared the concerns raised by the Government representatives of the United States and Canada regarding the scope of certain questions in the report form and expressed the view that further consultations were needed. After having further discussions with the Worker Vice-Chairperson, he proposed a new amendment to the second point of the draft decision to read: "Against this background, the Governing Body wishes to postpone the approval of the report form concerning minimum wage fixing instruments referred to in the appendix to the June 2012 Governing Body discussion, subject to further consultations."
69. *The Worker Vice-Chairperson* approved the latest proposed amendment.

Decision

70. The Governing Body:

- (a) *requested that governments submit reports for 2013, under article 19 of the Constitution, on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135); and*

- (b) *postponed the approval of the report form concerning minimum wage fixing instruments referred to in the appendix to document GB.313/LILS/6 to its 315th Session (June 2012), subject to further consultations.*

(GB.313/LILS/6, paragraph 12, as amended.)

Seventh item on the agenda

Other questions: Form for reports on the application of ratified Conventions (article 22 of the Constitution): Domestic Workers Convention, 2011 (No. 189) (GB.313/LILS/7/1)

71. *A representative of the Director-General (Director, NORMES) stated that it was standard procedure for the Office to prepare soon after the adoption of a new international labour Convention a report form to allow ratifying countries to submit reports on its application. She also indicated that report forms were useful tools going beyond ratification, as they provided assistance to governments with regard to the effective implementation of international labour standards. Turning to the proposed report form for the Domestic Workers Convention, 2011 (No. 189), she drew attention to four minor modifications. First, in the section entitled “Practical guidance for drawing up reports”, under the heading “Subsequent reports”, the words “evaluations or audits” in paragraph 2(b) should be replaced by “inspections”. Second, in point (a) of the question concerning Article 2 of the Convention, the words “in the first report” should be added after the words “please indicate”, and the word “and” should be added after “(a) and (b)”. Third, in point (c) of the same question, the words “in subsequent reports” should be added after the words “please describe”. Fourth, in the question concerning Article 3 of the Convention, the words “as set out in the Convention” should be inserted after the words “human rights of all domestic workers”.*
72. *The Employer spokesperson indicated that, in the question concerning Article 11 of the Convention, “a” should be deleted from the part of the sentence that read: “To the extent that a minimum wage fixing machinery exists”.*
73. *The Worker Vice-Chairperson recalled the emotion that had surrounded the adoption of the Domestic Workers Convention, 2011 (No. 189), and Recommendation, 2011 (No. 201). The Office and the ILO constituents should now strive to ensure that the aforementioned instruments became the practical expression of real improvements in the living and working conditions of domestic workers throughout the world. He welcomed the indications that a number of governments had submitted the instruments to the competent authorities, that in many cases tripartite consultations had generated proposals in favour of ratification of the Convention and that some States had announced their intention of ratifying it. Governments, especially those that were members of the Governing Body, were invited to follow that course of action if they had not yet done so. In conclusion, he endorsed the report form with the technical amendments proposed by the Office and the Employers’ group.*
74. *Speaking on behalf of the Africa group, the representative of Botswana expressed support for the draft report form concerning Convention No. 189.*

- 75.** *A Government representative of Colombia*, recalling that many countries had incorporated provisions guaranteeing the rights of domestic workers into their domestic legislation with a view to making equal working conditions for domestic workers a reality, indicated that Colombia had taken the decision to ratify Convention No. 189. The decision to incorporate the instrument into its domestic legislation was not only a testament to the country's commitment to respecting the rights of domestic workers but would also allow it to develop mechanisms aimed at improving their working conditions. She concluded by expressing her support for the statement made by the representative of the Director-General regarding the usefulness of report forms.
- 76.** *The Employer spokesperson* approved the report form subject to the amendments that had been discussed.

Decision

- 77.** *The Governing Body approved the report form for the Domestic Workers Convention, 2011 (No. 189), as revised.*

(GB.313/LILS/7/1, paragraph 2, as amended.)