



## Governing Body

334th Session, Geneva, 25 October–8 November 2018

GB.334/LILS/PV

Legal Issues and International Labour Standards Section

LILS

### MINUTES

## Legal Issues and International Labour Standards Section

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## Legal Issues Segment

### First item on the agenda

#### **Follow-up to the discussion on the protection of Employers' and Workers' delegates to the International Labour Conference and Regional Meetings and members of the Governing Body in relation to the authorities of a State of which they are a national or representative** ([GB.334/LILS/1](#))

1. *The Worker spokesperson* recalling that the item had been placed on the agenda of the Governing Body several times before, welcomed the documentation and clarifications provided by the Office at the tripartite consultation meetings held on the item in July and September 2018. She noted with regret that only four governments had commented on the document submitted for the 332nd Session (March 2018) since its recirculation following the session. She drew attention to point 3 of Appendix II to the document, which clarified the importance of bridging the protection gap that existed under the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I with respect to affording legal protection to Employers' and Workers' delegates and Governing Body members. The proposed protections, including against retaliatory actions, were key to ensuring meaningful social dialogue and effective tripartism at the ILO. They would also allow the ILO's key governance organs and the social partners to fulfil their mandates in conditions of enhanced independence, integrity and transparency. As such, her group appealed to governments to move forward on that very important matter.
2. *The Employer spokesperson* said that he welcomed the clarification in the document of the fundamental regulatory and legal principles of the draft resolution in a question-and-answer format in Appendix II and the outline of possible elements of a procedure for waiving immunity in Appendix III. He recalled that the draft resolution had been presented to the Governing Body many times already over the past three years and that, at the request of the Government group, a series of informal consultations had been held to identify the main reservations preventing governments from approving the resolution. Three out of the four governments that had expressed their views in writing had indicated that the draft resolution was acceptable, and his group expressed the hope that the silence from the others signified approval. Building on the resolution concerning freedom of speech of non-governmental delegates to ILO meetings, adopted by the Conference in 1970, the proposed resolution would strengthen social democracy within a regulatory and legal framework in line with ILO principles. His group expressed the hope that it would be adopted by the International Labour Conference in June 2019 and then broadly accepted by ILO member States.
3. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United States reaffirmed her group's commitment to the full protection of the freedom of speech of Workers' and Employers' delegates and thanked the social partners for giving the member States time to review the proposal. Her group particularly appreciated the question-and-answer section of the document. In keeping with their March 2018 commitment, IMEC members had vetted the proposal at the national level and supported it. The group welcomed the opportunity to reaffirm the ILO's commitment to the full exercise of free speech in furtherance of tripartism at the Centenary session of the Conference. IMEC supported the draft decision.

4. Speaking on behalf of the Africa group, the Asia and Pacific group (ASPAG) and of the group of Latin American and Caribbean countries (GRULAC), a Government representative of Brazil said that the regional groups, in line with the commitments they had made at the 332nd Session (March 2018), had undertaken the necessary consultations at the national level to vet the proposal to extend immunities and privileges to Workers' and Employers' delegates. While fully committed to strengthening protection for those delegates, and appreciative of the Office's efforts in that regard, the groups had concluded that the proposed resolution was not the ideal mechanism to achieve that goal. Some governments had legitimate concerns, such as the limited impact of the mechanism arising from the need to ratify the amendment to Annex I. The groups requested the Office to develop previously unexplored alternatives, such as the establishment of a special committee that had been mentioned during consultations, for presentation to the Governing Body.
5. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that her group was in full support of the freedom of speech of the social partners, free movement and tripartism and recognized the importance of ensuring compliance with article 40 of the ILO Constitution. However, the proposed revision to Annex I to the 1947 Convention presented difficulties, as identified during consultations, including those related to the jurisdiction of sovereign countries and member States that had not acceded to the 1947 Convention. Her group asked the Office to consider alternative mechanisms, such as strengthening the existing ILO mechanisms or establishing a new internal process. Her group did not support the draft decision.
6. *Speaking on behalf of GRULAC*, a Government representative of Brazil recalled that his group had consistently expressed its views on immunities to the Governing Body. For example, at the 328th Session (October–November 2016), it had agreed with the assertion made in the Office document (GB.328/LILS/1) that privileges and immunities were increasingly criticized as unjustified privileges that were too often abused. GRULAC observed that the immunity from legal process provided for in the proposed resolution was based on article 40, paragraph 2, of the ILO Constitution and the 1970 Conference resolution concerning freedom of speech of non-governmental delegates to ILO meetings, which the group respected and valued, and which covered only Employers' and Workers' Conference delegates and Governing Body members. Extending the scope of the proposed immunity to include Employers' and Workers' delegates and advisers to the ILO Regional Meetings exceeded the scope of those instruments and therefore had no legal basis. Advisers were allowed to speak at meetings only in the circumstances defined in article 3 of the Constitution and in the relevant provisions of the Standing Orders of the Conference and the *Rules for Regional Meetings*. The lack of understanding of such a limitation was a source of concern to his group, especially as an unlimited number of advisers could be accredited to national tripartite delegations. Such an extensive scope was of particular concern given that the constitutions of GRULAC member States had a restrictive approach to privileges and immunities. The group was also wary of the lax approach to the process of waiving immunity, which would be insufficiently expedient in an emergency, taking up to five months to complete. Nevertheless, his group reiterated its respect for the right of freedom of speech of Workers' and Employers' delegates to the Conference, Governing Body and Regional Meetings, who required independence and integrity when discharging their functions at ILO meetings and as part of their freedom of movement to attend those meetings, always under the jurisdiction of the host country. The group was unable to support the draft decision and called on the Office to find possible alternatives.
7. *The Worker spokesperson* said that there seemed to be broad agreement on the importance of freedom of speech. However, while high ideals were admirable, they could have no effect without suitable protection. There had been several instances in the 100-year history of the ILO where protection had been needed. The counter-argument on the limitations caused by the need to ratify was weak since many other ILO instruments also required ratification.

Although lack of support from significant government groups would engender difficulties when presenting the draft resolution to the International Labour Conference, there was a majority in favour of it in the Governing Body and it was time to move forward on a principle that everyone agreed on. Her group did not support the suggestion to establish a committee or search for alternatives, as it was legal protection that was needed. Of course, legal protection would not be sufficient if not implemented in practice, but at least it would serve to guide member States and the Office could provide technical assistance if required. The Office had adequately explained that the only legally sound way to close the “protection gap” was by amending Annex I to the 1947 Convention. She called on the Governing Body to move forward.

8. *The Employer spokesperson* said that Governments, Employers and Workers were all committed to protecting freedom of speech by virtue of the resolution adopted by the Conference in 1970 and article 40 of the ILO Constitution. The draft resolution under discussion was framed by clear and transparent procedures and obstacles arising from the ratification requirement could be overcome. It was imperative to move forwards with the resolution as the ILO’s existing mechanisms, such as the Credentials Committee and the Committee on Freedom of Association, were not reactive enough to provide effective protection in that regard, especially in urgent or unforeseeable situations. No alternative to the proposed amendment of Annex I to the 1947 Convention had so far been identified ensuring legal certainty and the same level of protection. It was hoped that the resolution would be adopted at the 2019 session of the International Labour Conference. Its acceptance and ratification by member States would follow in due course.
9. *Speaking on behalf of GRULAC*, a Government representative of Brazil asked that the carefully considered arguments raised in his statements on behalf of a very representative group of governments, which had a common interest in the principle of freedom of speech, be given full consideration. Although the principle was not being brought into question, the option under consideration was not the most viable or effective one. The legal arguments that GRULAC had put forward had not been addressed. Noting that the 1947 Convention, 71 years on, had still not been ratified by all the member States of the UN and other agencies, he said that the proposal on a resolution calling for the amendment of Annex I as a solution to the protection of freedom of speech raised questions. Alternatives had been considered during the consultations which, in addition to upholding the principle, would be more effective and easier to implement in the short term. He was not convinced that there was only one option and he asked the Office to make further proposals.
10. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that the Africa group was not convinced that there were no viable alternatives. She requested the Office to consider alternatives to protect ILO constituents.
11. *The Worker spokesperson* asked how many States had ratified the Convention. The arguments being raised were difficult to assess and would have to be considered by the Office, which had already answered many questions in its document. Regarding the argument that ratification was a hurdle and that there were faster alternatives, she said that if a decision was taken by the Conference to revise Annex I, States would be free to ratify it or not. What was important was first for the principle to be clear, and only thereafter to move towards ratification, for which the Office could provide technical assistance if necessary. If further measures could be taken to provide protection, they should be discussed, but the Workers firmly believed that those would not replace the legal protection that must be provided at the international level.
12. *A representative of the Director-General (Legal Adviser)* said that to date, the ratification status of the 1947 Convention stood at 129 ratifications, including three from Members that had not accepted Annex I relating to the ILO. Regarding GRULAC’s comment on the

purported lack of legal basis for the extension of the scope of the proposed immunities to advisers, he recalled that, in his response on that same point at the 328th Session (October–November 2016) of the Governing Body, he had referred to section 1(v) of the 1947 Convention which expressly stated that: “For the purposes of articles V and VII, the expression ‘representatives of members’ shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations.”

13. The “protection gap” had been created by section 17 of the 1947 Convention, under which the privileges and immunities did not apply to Employer and Worker representatives vis-à-vis the authorities of their own home States. As this was black-letter law, the optimal way to address the protection gap by legal means would thus be to amend Annex I, which adapted the standard clauses of the Convention to the specific needs of the ILO. Section 17 created a problem specific to the ILO as it was the only agency with a tripartite structure. From the beginning of the discussion of this item, the Office had explained that consideration could be given to a new Conference resolution similar to the 1970 resolution on the freedom of speech, which could go even further than that resolution by listing specific privileges and immunities that member States would be called upon to accord to Employer and Worker members. However, this would still be in the context of a non-binding resolution and one could question its added value and long-term impact, which was why after the second discussion of the item, no further consideration had been given to that option. The Office believed that the only clear-cut solution and legally sound way to fill the protection gap was by amending Annex I. However, it was willing to analyse any other viable options submitted to it.
14. *The Employer spokesperson* said that neither the Workers nor Employers wanted to destabilize a State. What was requested was sound and should be seen in the context of strengthening social democracy. Should there be a need for further debate, he suggested that such debate should take place in March 2019, but it was important in any case that the resolution should be presented at the next session of the Conference.
15. *Speaking on behalf of GRULAC*, a Government representative of Brazil said that he was grateful for all the documents submitted by the Office, which the members of his group had read very carefully. The fact that a question was repeated meant that further clarification would be helpful. He observed that paragraph 3 of article 40 of the Constitution, the most important legal text for the Organization, under which the privileges and immunities were to be defined in a separate agreement, mentioned only delegates, which was why he did not see how other categories could be included. Any considerations should be based on that concept and on the meaning of that concept in the Constitution, which was the basis of GRULAC’s legal reasoning. He reiterated that consideration should be given to how a more effective alternative could be found with short-term results based on a consensus. The Legal Adviser had referred to a Conference resolution, and during the consultations reference had been made to a special committee. He asked if those alternatives could be considered. GRULAC was not in a position to adopt the draft decision as presented.
16. *The Worker spokesperson* said again that there had not yet been any mention of a legally sound option that would provide the kind of protection that was very much necessary for non-governmental delegates and their advisers. In Appendix II to its document, the Office explained that only a limited number of people were concerned, six on average per member State at the Conference. Given that the Workers, Employers and IMEC considered it to be the best way forward, she did not think that a decision should be postponed. She proposed that the resolution should be submitted to the Conference and that the discussions should continue up until then. There would be time to see whether more countries would ratify. It was necessary for the principles that they all agreed on to be reflected in the next steps forward, as that was how the ILO had always worked. Principles were followed by standards

that were adopted gradually and then implemented, with Office support, to move in a chosen direction.

17. *The Chairperson* asked whether the proposal to postpone the discussion on the draft resolution until March 2019 was acceptable.
18. *The Worker spokesperson* said that the debate had been going on for several years and that neither the Legal Adviser nor anyone else had found any legally sound alternatives that would provide the same level of protection. If groups could not support the decision at the current session, she did not see how they would be in a position to support it in March.
19. *Speaking on behalf of IMEC*, a Government representative of the United States reiterated that IMEC looked forward to adopting the draft resolution at the June 2019 session of the Conference.
20. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that, if a decision was to be adopted, countries would have to amend their laws. She therefore agreed that the matter should be deferred to the next session.
21. *The Employer spokesperson* said that in his view that matter would have to be referred to the Conference, but he wished to consult with the Workers on whether to postpone the decision until March 2019.
22. *The Worker spokesperson* said that it was important to seek a consensus, which did not mean unanimity. If it was still possible to put the item on the agenda of the Conference in June 2019 if the decision were to be taken in March 2019, the Workers were prepared to postpone the decision until the March session to give the Governments an opportunity to further study the Office proposal and request any additional clarifications they might need from the Office of the Legal Adviser so as to be able to envisage supporting the draft decision. The Workers' group would be prepared to consider possible alternatives only if they gave protection equivalent to that proposed. Otherwise, the draft decision should be taken at the March 2019 session. In reply to Lesotho's remark, she said that issues of compatibility with domestic legislation generally arose at the ratification stage, but not at the time the resolution was adopted. She trusted that the Employers agreed with her points and hoped that IMEC could too.
23. *Speaking on behalf of IMEC*, a Government representative of the United States noted that IMEC had been prepared to take a definitive decision on the matter that day, but acknowledged the Workers' and Employers' flexibility with a view to reaching a broader consensus. As long as the resolution could be on the Conference agenda in June 2019, she could support the proposal to postpone the decision until March 2019.
24. *A Government representative of Brazil* said that a consensus, understood as being the absence of clear and explicit dissent, had not been reached regarding the draft decision, which, in the eyes of many governments, was neither viable nor the most effective option. The Office had the capacity to come up with alternatives that offered the necessary and adequate level of protection even if they were not the ones preferred by other groups. Thanking the Employers and Workers for their flexibility, he suggested that discussions on the draft decision could be resumed at the March 2019 session of the Governing Body, which could be preceded by consultations undertaken with a view to coming up with alternatives. Any final decision must have the support of all the governments to ensure that the ratification process would not turn into a major hurdle.
25. *The Director-General* said that the Office was not in a position to identify any alternative that would provide the same legal certainty as the draft resolution currently before the

Governing Body. Those governments suggesting that alternatives might exist should present them but they should not be of a procedural nature, such as establishing a committee, but be substantive. Whether the final decision was taken at the current time or in March 2019, it would have equal effect in that the final destination was the International Labour Conference in June 2019. On that basis the Governing Body might be in a position to postpone a decision on this item in March 2019, subject to the clear understanding that any alternative constituents might identify in the meantime should be forwarded to the Office for proper review.

26. *The Employer spokesperson* said that the consultation process had been completed and that most of the limited number of governments that had responded had indicated that the resolution was perfectly acceptable. Any clearly defined alternative proposals providing equivalent protection should be submitted and could be discussed in March 2019.
27. *The Worker spokesperson* said that her group's definition of the term "consensus" differed from that of the Government of Brazil. The Workers endorsed the statement made by the Employer spokesperson.
28. *The Chairperson* said that the adoption of the draft decision would be deferred until the March 2019 session of the Governing Body.

## Decision

29. *Taking into account the information provided in document GB.334/LILS/1 and the views expressed in the ensuing discussion, the Governing Body deferred the adoption of the draft decision set forth in paragraph 9 of the document to its 335th Session (March 2019).*

(GB.334/LILS/1, paragraph 9, as amended by the Governing Body.)

## International Labour Standards and Human Rights Segment

### Second item on the agenda

#### **Report of the third meeting of the Special Tripartite Committee established under the Maritime Labour Convention, 2006, as amended** (Geneva, 23–27 April 2018) ([GB.334/LILS/2\(Rev.\)](#))

#### **Report of the Chairperson to the Governing Body, in accordance with article 16 of the Standing Orders of the Special Tripartite Committee**

30. *The Employer spokesperson* said that his group suggested adding a subparagraph to the draft decision to the effect that the Governing Body "noted the STC's recommendations to review the situation of 5 outdated Conventions, i.e. C. 58, C. 22, C. 146, C. 23 and C. 166, at the

next meeting of the STC, in 2021". During the third meeting of the Special Tripartite Committee (STC), the shipowners had: argued that the Maritime Labour Convention, 2006, as amended (MLC, 2006), did not provide for concentrated inspection campaigns even if they might be considered as a good tool for some; expressed concern that the Committee of Experts' interpretation of "maximum period of service on board" was not in line with the Convention (an issue with regard to which they had sent a communication to the Committee that should be addressed by means of a response in its next report); and stated that they were not in a position to form an opinion on the issue of inland waterways, as that sector was not covered by them. The Employers' group supported the draft decision.

31. *The Worker spokesperson* said that her group welcomed the adoption, at the 107th Session (2018) of the International Labour Conference, of the amendments to the Code of the MLC, 2006, on the protection of seafarers' wages in the event of piracy and armed robbery against ships. Currently, around 88 member States had ratified the Convention and it was hoped that the figure of 100 ratifications would be reached in time for the Centenary of the Organization. The STC had worked in a very efficient manner. Her group trusted that, at its next meeting, the Standards Review Mechanism Tripartite Working Group (SRM TWG) would effectively address the issues brought to its attention by the STC. The draft decision did not contain any explicit reference to the need to promote the ratification of the MLC, 2006, regarding countries currently bound by outdated instruments and to extend the application of the Convention to the non-metropolitan territories in which the outdated Conventions were applicable. The Workers' group had submitted an amendment to the draft decision in order to stress the importance of the Office actively promoting the MLC, 2006. Although her group supported the Employers' group's proposed amendment to the draft decision, it shared the Committee of Experts' interpretation of "maximum duration of service periods on board". That issue should be addressed at the STC level. The Workers supported both the work of the Committee of Experts to supervise the implementation of the Convention and the crucial role of port State control authorities in that regard. It was important to be clear about and strengthen the complementary relationship between the work of those authorities and that of the ILO supervisory bodies.
32. *Speaking on behalf of the Africa group*, a Government representative of Nigeria said that his group supported the proposed amendments to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006, the draft decision and the amendments put forward by the Employers' and Workers' groups.
33. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Romania said that the candidate countries Montenegro, Serbia and Albania and the country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina aligned themselves with her statement. All non-landlocked EU Member States had ratified the MLC, 2006. The relevant provisions and amendments of the Convention were implemented into EU legislation on the basis of agreements between EU social partners and enforcement of the instrument was secured through EU legislation on flag State and port State control. The EU and its Member States were committed to addressing the issues of decent working conditions for seafarers and a level playing field for shipowners. The adoption of amendments related to seafarer victims of piracy or armed robbery against ships was welcome, as was the exchange of information on the implementation of the Convention. The functioning of recruitment and placement services, capacity building and compliance and enforcement issues merited particular attention and could be discussed at the Sectoral Meeting on the Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers in February 2019. She supported the draft decision and the amendments put forward by the Employers' and Workers' groups.
34. *A Government representative of the United States* said that her Government supported the substantive assessment of the STC with respect to the Conventions reviewed to which the United States was a party. She asked what impact the abrogation of Convention No. 53

would have on the obligation of States parties to Convention No. 147 to continue to report on efforts to give effect to Articles 3 and 4 of Convention No. 53. Irrespective of any Governing Body recommendations or International Labour Conference votes regarding the abrogation or withdrawal of Conventions, her Government would continue to consider itself bound by those instruments until such time as it might denounce them. A vote of the Conference to abrogate a Convention could not alter the treaty obligations of States parties thereto vis-à-vis other States parties to the same instrument. Office campaigns for denunciation of outdated Conventions and for consideration of ratification of up-to-date standards were critical to the success of the standards review process. Denunciation was the appropriate mechanism for extinguishing outdated treaty obligations in a manner consistent with international law.

35. *A Government representative of Mexico* said that his country had been working towards ratification of the MLC, 2006. However, obstacles existed in that regard in the form of provisions of the Convention that either contradicted, or were not reflected in, domestic legislation. Thus, the recommendation of the STC concerning promotion of the ratification of the MLC, 2006, among countries still bound by Convention No. 9 and other related Conventions, and the provision of technical assistance by the Office in that regard, was especially relevant. Such assistance would help Mexico overcome existing barriers to ratification of the MLC, 2006. Mexico supported the draft decision, in particular subparagraph (c), and the amendments submitted at the current meeting.
36. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that a number of member States had notified the Office of their decision to ratify the MLC, 2006, and a number of others were actively considering ratification, bringing the target of 100 ratifications by the ILO Centenary within reach. Regarding the impact of abrogation of Convention No. 53, she advised that member States would have no responsibility to the ILO for a Convention included in the annex to Convention No. 147 that had been abrogated and would not be subject to supervision by ILO bodies; a ratifying State may choose to continue to apply its national legislation in accordance with an abrogated Convention.
37. *The Worker spokesperson and the Employer spokesperson* said that they supported the amendments to the point for decision and the proposed order and were pleased to note that the amendments proposed by both groups had enjoyed unanimous support.

## Decision

38. *The Governing Body took note of the report of the Chair of the STC concerning its third meeting and:*
- (a) *welcomed the work conducted by the STC in relation to the review of 34 maritime-related international labour standards and the consensual recommendations thereon;*
  - (b) *decided that the 34 maritime-related instruments reviewed by the STC should be classified as outdated, and requested the Office to take the necessary follow-up action in that regard;*
  - (c) *noted the STC's recommendations concerning the withdrawal of Recommendations Nos 27, 49, 107, 137, 139, 153, 154, 174, 186 and 187 as well as of Conventions Nos 7, 54, 57, 72, 76, 93, 109, 179 and 180, in relation to which it would consider placing an item on the agenda of the*

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*109th Session (2020) of the International Labour Conference (see GB.334/INS/2/1);*

- (d) took note of the juridical replacement of Recommendation No. 109 by Recommendation No. 187, and of Recommendation No. 77 by Recommendation No. 137, and requested the Office to take the necessary follow-up action;*
- (e) noted the STC's recommendations concerning the abrogation of Conventions Nos 8, 9, 16, 53, 73, 74, 91 and 145, in relation to which it would consider placing an item on the agenda of the 109th Session (2020) of the International Labour Conference (see GB.334/INS/2/1) and drew the attention of the SRM TWG to any issues that may arise from the abrogation of Convention No. 145;*
- (f) noted as well the STC's recommendations to review the situation of five outdated Conventions, that is Conventions Nos 22, 23, 58, 146 and 166, at the next meeting of the STC in 2021;*
- (g) requested the Office to encourage countries bound by outdated Conventions to ratify the MLC, 2006, and to encourage countries having ratified the MLC, 2006, and still bound by outdated Conventions in respect of non-metropolitan territories to extend the application of the MLC, 2006, to those territories;*
- (h) endorsed the establishment of a subsidiary body of the STC with the mandate described in paragraph 20 of document GB.334/LILS/2(Rev.);*
- (i) appointed Ms Julie Carlton (United Kingdom) for a second term as the Chairperson of the STC for a three-year term (2019–21); and*
- (j) decided to convene the fourth meeting of the STC in 2021 (18–22 April), and requested the Director-General to include a provision for that purpose in the Programme and Budget proposals for 2020–21.*

(GB.334/LILS/2(Rev.), paragraph 22, as amended by the Governing Body.)

## Third item on the agenda

### **The Standards Initiative: Report of the fourth meeting of the Standards Review Mechanism Tripartite Working Group (Geneva, 17–21 September 2018)**

#### **Report of the Officers, in accordance with paragraph 17 of the terms of reference of the Standards Review Mechanism Tripartite Working Group ([GB.334/LILS/3](#))**

39. *The Chairperson of the SRM TWG* reported that the SRM TWG had made recommendations classifying the nine standards reviewed, according to the simplified classification system adopted in 2017, and concerning the follow-up taken to two instruments previously classified as outdated. Emphasizing recommendations proposing practical and time-bound follow-up actions, he drew attention to the need for the Organization to take the appropriate measures to guarantee the time-bound elements of all recommendations of the SRM TWG, including withdrawal and abrogation of outdated standards, promotion of up-to-date standards and standard-setting activities. Ensuring that the ILO had a clear, robust and up-to-date body of international labour standards that responded to the changing patterns of the world of work for the purpose of the protection of workers and taking into account the needs of sustainable enterprises was a complex task, relying on a constructive tripartite process. The members of the SRM TWG were fully committed to fulfilling the role entrusted to them by the Governing Body.
40. *The Worker spokesperson* was pleased that the SRM TWG was successful in reaching consensual recommendations, in the sense of parties having accepted the outcome of the discussion but not necessarily agreeing on every detail. She noted that no gaps in ILO regulation had been identified at the fourth meeting of the Working Group, but some previously identified gaps had not received adequate follow-up action. Her group expected the ILO to attach equal importance to the SRM TWG's recommendations, whether they pertained to the setting, review or abrogation of standards. Effective implementation of the practical and time-bound follow-up actions recommended by the SRM TWG was essential for the success of its work and a lack of tripartite commitment to implementing the recommendations risked endangering the support of the Workers' group for the exercise. Each of the recommendations for follow-up action should be viewed as part of a complementary and interrelated package.
41. The Workers' group agreed very reluctantly to attach an abrogation date to the instruments recommended for abrogation in 2022 and 2024 when some member States that were bound by those outdated instruments had not yet ratified the relevant up-to-date Conventions. That was particularly true for outdated instruments that continued to offer a certain level of protection to workers, such as the Safety Provisions (Building) Convention, 1937 (No. 62), and the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85). Her group saw a need first to transition from ratification of old instruments to new instruments before the old ones were abrogated. It would therefore consider the recommendations to first abrogate or withdraw outdated instruments as being a test of whether that led to results in terms of the ratification of up-to-date instruments, thus preventing any gaps in protection. If it did not, the Workers' group would be unable to support a similar approach in the future in relation to the abrogation or withdrawal of

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instruments, or even agree to the inclusion of the item on the agenda of the International Labour Conference.

42. The fourth meeting of the SRM TWG had provided members with a first opportunity to voice their preferences and concerns with respect to institutional arrangements concerning the standard-setting follow-up to its 2017 recommendations in the area of occupational safety and health (OSH), as well as the impact of its recommendations on the Conference agenda and the Office. The Office would elaborate further preparatory documents on that basis, to be discussed during the fifth meeting of the SRM TWG, in September 2019. In the expectation that the Governing Body would commit to the implementation of the recommendations, and noting the group's concerns regarding those recommendations, the Workers' group could support the draft decision.
43. *The Employer spokesperson* said that his group considered the outcomes of the third substantive review of the SRM TWG to be satisfactory. Despite some initially diverging positions, the SRM TWG adopted consensual recommendations regarding classification and follow-up of the standards. His group wished to see three issues addressed at future meetings. First, more information on the relevance of reviewed standards to the trends in the real world of work was needed, including the views of constituents using the standards in member States. Second, there should be more discussion in the preparatory technical notes of the options for classification and follow-up action, identifying possible alternatives and their advantages and disadvantages. Third, the ILO web page should present information in a more transparent and clear manner. Titles of documents and the provisional programme could more clearly indicate the instruments being reviewed, and a table could display the total number of international labour standards reviewed, their classification and follow-up.
44. In terms of achievements so far, while it had been relatively easy to classify OSH standards as "requiring further action to ensure continued and future relevance", it was less easy to define that action; the meeting had discussed three options but there could be more. One lesson learned seemed to be that the adoption of new standards went hand in hand with their regular modernization. He considered that there was presently a major modernization backlog, where many standards needed to be discarded or revised. Practical ways to avoid this in the future should be explored. One option would be to limit content susceptible to becoming outdated and transfer it to forms of regulation such as guidelines or codes of practice, which were easier to update. In addition, information pointing to a need for revision could be more systematically collected and ways to simplify and accelerate procedures for the updating of standards could be identified.
45. A further lesson learned was that there was a limit both to what member States could manage with respect to the ratification of Conventions and to what the Office and the supervisory bodies could do to improve their application. The increasing number of reports required from ratifying States increased the burden on Governments as well as on the Office to assist the supervisory bodies. Lengthening reporting intervals called into question the effectiveness of supervision and did not address the root problem: the high and increasing number of ratifiable Conventions. One possible solution would be to reduce the number of standards through consolidation, as had been very effectively done with the Maritime Labour Convention, 2006 (MLC, 2006), which had shown that consolidation of a large number of instruments was possible without compromising the protection of workers. Standards pertaining to OSH could perhaps be consolidated into a few framework instruments accompanied by more detailed recommendations, technical guidelines, codes of practice and other non-normative ILO action; a broad and thorough discussion of all existing options would allow the most suitable options to be identified.

46. The Employers' group considered that the current SRM TWG review and the follow-up to its recommendations presented a unique opportunity for the ILO to place its standards system on a firmer and more sustainable footing, starting with the OSH standards. It was important that reports of the SRM TWG meetings contained comprehensive records of what had been said, so that the considerations underlying the decisions could be understood and different points of view could be reflected. His group supported the draft decision.
47. *Speaking on behalf of the Government group*, a Government representative of Azerbaijan highlighted the report's recommendations on the classification of the instruments under review as outdated or up to date, supported the placing of items on the agenda of the Conference for the abrogation or withdrawal of outdated instruments, and took note of the various follow-up actions to be implemented. In that regard, member States and the Office would need to implement practical and time-bound actions, including promotional campaigns and technical advice aiming at the ratification of up-to-date Conventions. His group welcomed the decision that the SRM TWG would examine instruments concerning employment policy at its fifth meeting, in September 2019. With regard to organizing the SRM TWG meeting, he requested that the spokesperson of the Government group should be invited to the SRM TWG Officers' meetings. Since Governments were ultimately responsible for implementing international labour standards at the national level, Government members should be closely engaged in all activities of the SRM TWG meetings. He requested the Office to hold an information session for Governments before the fifth meeting, to enable his group to prepare for and to understand the work of the SRM TWG. His group supported the draft decision.
48. *Speaking on behalf of the Africa group*, a Government representative of Cameroon took note of the report of the fourth meeting of the SRM TWG, its recommendations and the dates of its fifth meeting. She welcomed the fact that instruments on employment policy would be addressed at the SRM TWG's next meeting, given the key role played by employment policy in ensuring global economic stability. By focusing on employment policy instruments during its Centenary, the ILO would demonstrate its commitment in that area. Her group supported the draft decision.
49. *Speaking on behalf of ASPAG*, a Government representative of the Republic of Korea reiterated the importance of the SRM TWG in ensuring a clear, robust and up-to-date body of standards in a rapidly changing world of work. He stressed the importance of the timely distribution of the reports of the SRM TWG to allow sufficient time for members of the Governing Body to review the content, especially as the recommendations approved by the Governing Body – including the follow-up actions and the proposed future abrogation or withdrawal of outdated instruments – would significantly affect all constituents. His group supported the draft decision.
50. *Speaking on behalf of GRULAC*, a Government representative of Brazil said that the report clearly and accurately reflected the outcomes of the fourth meeting of the SRM TWG. His group supported the decision on the classification of the instruments. He noted with interest the recommendations on follow-up measures involving promotion, technical assistance and non-normative activities, in particular the recommendations to undertake a study on gender equality in the mining sector; the regular review of the Code of practice on safety and health in construction; and the development of guidelines on general principles in the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). The agreements reached on the timelines for implementation of the follow-up measures should be taken into account by the Governing Body to ensure the effectiveness and impact of the recommendations. The outcomes of the SRM TWG continued to contribute to the clear, robust and up-to-date body of international labour standards, and his group welcomed the decision to review the instruments on employment policy at its following meeting. He reiterated his group's appreciation for the participation

of technical advisers in the meeting, as the support they provided to Government members had permitted a more informed and inclusive discussion. He also echoed the call for Governments to be included in the SRM TWG Officers' meetings to contribute to more effective, flexible and transparent functioning of the Group. His group supported the draft decision.

- 51.** *Speaking on behalf of the EU and its Member States*, a Government representative of Romania said that Montenegro, Serbia, Albania, Bosnia and Herzegovina, and Georgia aligned themselves with her statement. She underlined the importance of the outcomes of the SRM TWG's fourth meeting regarding the classification of instruments and the accompanying series of follow-up actions. There had been considerable discussion on the implementation of follow-up to its work. One option contemplated was the partial consolidation of OSH instruments, including the use of protocols and mechanisms to more easily update instruments to reflect scientific advances and changes in the world of work. The SRM TWG also began discussing options to expedite standard-setting items, including prioritizing SRM TWG related standard-setting items on the agenda of the International Labour Conference and the convening of tripartite meetings; that discussion would continue at the fifth meeting. She reiterated that the abrogation or withdrawal of outdated instruments and the adoption of new instruments were equally important in terms of follow-up.
- 52.** To ensure the ILO's body of standards was up to date, gaps in coverage identified by the SRM TWG should be addressed effectively. To ensure the effectiveness of the review process, the momentum of follow-up activities must be maintained, and proposals on the planning of standard setting should be developed to accelerate the process. The form and content of revised or new Conventions and Recommendations would be particularly significant in terms of the level of protection, the capacity to adapt and the reporting process. The ILO could consider adopting standards that were less prescriptive, but still with ambitious and binding goals, to allow countries more flexibility in the means to achieve those goals. The EU could share experience of its own OSH legislation in that regard. She looked forward to receiving the Office's further proposals for ensuring coherence and consistency in relation to OSH instruments, considering the consolidation of OSH instruments as one possible option. Turning to outdated instruments, she supported the Office having time to implement ratification campaigns and to provide technical assistance and guidance so as to maintain or enhance worker protection. However, she did not support maintaining outdated Conventions indefinitely, and welcomed the inclusion of dates for the abrogation and withdrawal of instruments.
- 53.** The EU and its Member States attached great importance to international labour standards and their effective supervision, and several EU policies and instruments contained references to the promotion and respect of international labour standards. The Office should fully integrate the outcomes of the fourth meeting of the SRM TWG into its activities and align them with other ILO activities as a matter of priority, including in setting the agenda of the International Labour Conference. She requested the Office to continue to explore options to ensure concrete and timely follow-up to the recommendations on standard-setting. She supported the draft decision.
- 54.** *A Government representative of the Islamic Republic of Iran* said that his Government had participated with great interest in the fourth meeting of the SRM TWG. He attached great importance to its mandate, which contributed to the advancement of the Standards Initiative. He requested the Office to take appropriate steps to follow up on the recommendations of the fourth meeting. It was crucial to undertake regular assessments of the SRM TWG and its work performed to date. He stressed the necessity of having advisers attend meetings of the SRM TWG. He supported the draft decision.

55. *The Worker and Employer spokespersons apologized to the Government group on behalf of the SRM TWG for the delay in distribution of the report, which had resulted from the complexity of the discussions.*
56. *The Chairperson of the SRM TWG noted that the SRM TWG did not work in isolation, but depended on effective outreach to constituents to ensure that its recommendations, which were sometimes the result of compromise, were implemented. The SRM TWG went beyond review and classification to consider the practical follow-up and implementation of its recommendations. He noted the requests for information sessions and acknowledged the need to avoid future delays in the submission of the meeting report. He concluded by stating that the SRM TWG had made significant progress and expressed optimism concerning its future work.*
57. *In recognition of his many years of dedicated service to the ILO, the Director-General and the Governing Body paid tribute to Mr Gerardo Corres, Chairperson of the Legal Issues and International Labour Standards Section, concluding in a round of applause.*

## Decision

58. *The Governing Body took note of the report of the Officers concerning the fourth meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) and, in approving its recommendations:*
- (a) welcomed the commencement, by the SRM TWG, of the crucially important discussion of its institutional implications with the aim of ensuring the sustainability of its process, and looks forward to continuing to receive updates from the SRM TWG in relation to its ongoing consideration of how to ensure follow-up to the SRM TWG is implemented as a matter of institutional priority, and how to ensure coherence and consistency in the standards policy framework in relation to occupational safety and health (OSH) instruments;*
  - (b) decided that the nine instruments concerning OSH (general provisions and specific risks) reviewed by the SRM TWG should be considered to have the classifications it has recommended, and requests the Office to take the necessary follow-up action in that regard;*
  - (c) called upon the Organization and its tripartite constituents to take appropriate measures to follow up on its recommendations relating to standard setting as well as to the time-bound element of all recommendations resulting from its review of standards, including follow-up action involving abrogation and withdrawal of outdated standards, giving due consideration to the availability of technical assistance to encourage ratification of up-to-date instruments;*
  - (d) requested the Office to commence work on a study on gender equality in the mining sector, a revision of the 1992 Code of practice on safety and health in construction, the development of guidelines on the general principles in the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and requested the International Conference of Labour Statisticians (ICLS) to call on member States currently bound by the Convention concerning Statistics of Wages and Hours of Work,*

*1938 (No. 63), to consider ratification of the Labour Statistics Convention, 1985 (No. 160);*

- (e) noted the SRM TWG's intention to monitor the implementation of its recommendations to promote ratification of certain instruments at its own future meetings, as well as to monitor progress in relation to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), and the study concerning gender equality in the mining sector within the context of the labour protection recurrent discussion that would take place in 2022;*
- (f) noted the SRM TWG's recommendations concerning the abrogation and withdrawal of certain instruments, in relation to which it will consider (see GB.334/INS/2/1):*
  - (i) placing on the agenda of the 111th Session (2022) of the International Labour Conference an item concerning the withdrawal of the Labour Inspection Recommendation, 1923 (No. 20); and*
  - (ii) placing on the agenda of the 113th Session (2024) of the International Labour Conference an item concerning the abrogation of the Underground Work (Women) Convention, 1935 (No. 45), the Safety Provisions (Building) Convention, 1937 (No. 62), Convention No. 63, and the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85);*
- (g) noted the work undertaken by the Office in follow-up to the recommendations of the SRM TWG at its second and third meetings and requested the Office to continue this follow-up as planned;*
- (h) decided that the SRM TWG would examine the nine instruments concerning employment policy (eight instruments and one outdated instrument), within sets of instruments 1 and 4 of the revised initial programme of work, in its fifth meeting; and*
- (i) decided to convene the fifth meeting of the SRM TWG from 23 to 27 September 2019.*

(GB.334/LILS/3, paragraph 5.)

## **Fourth item on the agenda**

### **Choice of Conventions and Recommendations on which reports should be requested under article 19, paragraphs 5(e) and 6(d) of the ILO Constitution in 2020 ([GB.334/LILS/4](#))**

59. *The Worker spokesperson* said that her group supported the first option. Care work entailed many decent work deficits and was mostly performed by women and girls, often migrant workers, under poor conditions and for low pay or no pay. Investment in the care sector

could create jobs and narrow gender pay gaps, reduce overall inequality and help redress the exclusion of women from decent jobs. Demand for care work was likely to increase; a General Survey on the care economy would contribute to the design of strategies to ensure the creation of decent jobs and the identification of gaps in the ILO normative framework. Ten years after their adoption, it was time to assess how the Domestic Workers Convention, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201), were being implemented and what obstacles remained to the ratification of Convention No. 189. While the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was important, it contained few provisions on labour protection so might not be the best choice for a General Survey that should inform the recurrent discussion on labour protection in 2022. Furthermore, the focus on one instrument would not reflect the holistic view sought by the Social Justice Declaration. Priority should be given to the development of a code of practice on participation and previous consultation, an area in which many member States faced challenges and sought further advice from the ILO, in order to address the key challenges and encourage more countries to ratify the Convention.

- 60.** *The Employer spokesperson* said that the General Survey was a valuable instrument that ensured appropriate links were established between the recurrent discussions and the outcomes of the Standards Initiative, in particular to make better use of article 19, paragraphs 5(e) and 6(d) of the Constitution without increasing the obligations of member States. It also contributed to the related discussions of the Committee on the Application of Standards, which fed into the recurrent discussion. The reporting requirements under article 19, paragraph (5)(e) allowed the General Survey to make a comprehensive evaluation of all provisions of the selected instruments. None of the proposed instruments had been the subject of a General Survey. His group favoured the second option on indigenous and tribal peoples, having understood during discussion of document GB.334/POL/2 that ratifying States had difficulties implementing Convention No. 169, especially regarding the right of consultation and participation. The General Survey could contribute to clarifying the consultation process and help States build regulatory frameworks and balanced institutions, which would lead to progress and better employment. The Employers urged the Governing Body to support the second option but were also ready to support the first.
- 61.** *Speaking on behalf of IMEC*, a Government representative of the United States asked the Office to ensure that the questionnaire was concise, focused and grounded in the provisions of the instruments. Consultations on the report form in advance of its discussion at the March 2019 session would ensure that the Governing Body was able to adopt the form during that session. IMEC supported the draft decision.
- 62.** *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that while both options were pertinent, the first covered workers whose efforts had multiple socio-economic impacts at national and global levels. The instruments listed covered a large proportion of the workforce, characterized by numerous decent work deficits. A General Survey report on the first option would unfold strategies to improve the ratification and implementation of the Nursing Personnel Convention, 1977 (No. 149), and Convention No. 189 and the national application of their Recommendations, and lead to a comprehensive consideration of care work. Furthermore, it would benefit the review and development of policies and legislation to promote decent work for all. Her group supported the first option.
- 63.** *A Government representative of Uruguay*, speaking also on behalf of the Government representatives of Argentina, Brazil and Peru, said that in view of the projected increase in demand for care workers and the economic potential and range of that sector, the Office should prepare the report form on the first option; its broader perspective would facilitate policy design and optimize compliance. Workers in the care and domestic sectors were often women and migrant workers, who suffered particular vulnerability and inequality, often worked long hours without social protection and were poorly paid or unpaid. Much remained

to be done to improve their working conditions. It was high time to examine Conventions Nos 149 and 189 and to make an honest appraisal of the sector, based on reliable and exhaustive data, to find realistic solutions. In an increasingly unstable global economy, there was a need to find tools to support care workers in the years to come.

64. *A Government representative of India* said that the burden of child and elder care and domestic work fell disproportionately on women, particularly from disadvantaged groups, affecting their work participation rates and typical occupations. Domestic work was common in the developing countries and was an important source of employment for migrant workers, although largely unregulated working conditions led to decent work deficits. The nursing profession was similarly dominated by women and migrants, who were vulnerable to exploitation. The examination of the first option would give an insight into the labour protection policies, laws and practices followed by member States in the care economy. The aim of the General Survey should be to understand the current situation in member States in respect of the instruments concerned; existing laws and practices should be examined from a gender perspective and potential gaps in international labour standards in that sphere identified.
65. *A Government representative of Mexico* reiterated the importance that his Government attached to indigenous peoples and expressed its support for the second option, which would contribute to fostering the strategy for ILO action concerning indigenous and tribal peoples for inclusive and sustainable development. The choice of that option would be in line with the recommendation of the Standards Review Mechanism at its second meeting.
66. *A Government representative of Nigeria* emphasized the inestimable need to promote and protect decent work. Bearing in mind the interest generated by discussion of the informal and formal sectors and gender and social security matters in the recent past and the need to adapt, her country favoured the promotion of decent work in the care economy. Care workers were often vulnerable, underpaid and exploited; it was timely and proper for member States to consider and discuss the relevant instruments and evaluate compliance. Ideally, the Survey would generate positive responses and analysis that would ensure dignity at work, encourage participation and allow societies built on respect for human rights, elements central to the promotion of decent work opportunities for all in conditions of freedom, equality, security and dignity.
67. *The Worker spokesperson* said that the first option, which her group supported, appeared to be leading in the room.
68. *The Employer spokesperson* said that while he regretted that the majority did not share his group's concerns, the Employers would support the first option to achieve consensus. He supported the request of the United States for a concise, focused and grounded questionnaire and emphasized the need for a sensitive approach to the area covered by the first option and to identify who the workers in that sector were and what were their actual working conditions.

## Decision

69. ***The Governing Body requested the Office to prepare, for its consideration at its next session in March 2019, the article 19 report form on the instruments related to "Decent work for care economy workers in a changing economy" (Nursing Personnel Convention, 1977 (No. 149), Nursing Personnel Recommendation, 1977 (No. 157), Domestic Workers Convention, 2011 (No. 189) and Domestic Workers Recommendation, 2011 (No. 201)) for the General Survey to be prepared by the Committee of Experts on the Application of Conventions and***

*Recommendations (CEACR) in 2020 for discussion by the Conference Committee on the Application of Standards in 2021.*

(GB.334/LILS/4, paragraph 20.)