



TENTH ITEM ON THE AGENDA

**Report of the Committee on Legal Issues
and International Labour Standards***Contents*

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1. The Committee on Legal Issues and International Labour Standards (LILS) met on 21 March 2006. The following members served as Officers:

<i>Chairperson:</i>	Mr. G. Corres (Government, Argentina)
<i>Employer Vice-Chairperson:</i>	Ms. F. Awassi
<i>Worker Vice-Chairperson:</i>	Mr. U. Edström

First part: Legal issues

I. Compendium of rules applicable to the Governing Body: Progress in finalization (First item on the agenda)

2. At its 294th Session (November 2005), the Governing Body approved the *Compendium of rules applicable to the Governing Body*, a consolidation of the existing rules applicable to the Governing Body, and requested the Office to publish it without delay.¹ The Committee now had before it a document concerning progress made by the Office in finalizing the publication of the Compendium.²
3. The Legal Adviser informed the Committee that, as the Governing Body had requested, the Office had produced the Compendium in both print and electronic format,³ after adding a table of contents and an index. The Office welcomed feedback from users.
4. The Worker members noted the information provided and expressed their gratitude to the Office for producing the Compendium.
5. The Employer members welcomed the publication of the Compendium and recalled their belief that in order to strengthen the ILO, its governing structures needed to be strong, visible and effective. They expected that the publication would make the rules applicable to the Governing Body accessible to all. That would make the functioning of the Governing Body more transparent, in particular for new members and the outside world, and increase the impact of its decisions and guidance. They commended the Office of the Legal Adviser for the efforts made to consult with constituents during the process of developing the Compendium, and hoped that example would be followed in the future.
6. The Government member of Argentina, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), expressed satisfaction with the document presented and with the process through which it had been developed. That work was very important, first, because it would facilitate the handling of issues in the Governing Body, second, because as a result of greater knowledge of the rules, better use would be made of the procedural options that existed, and third, because it would permit a more active participation in the debates. She called for the same spirit of dialogue in updating the rules.

¹ GB.294/LILS/1 and GB.294/9(Rev.), para. 24.

² GB.295/LILS/1.

³ URL address: http://www.ilo.org/public/english/bureau/leg/compendium_ef_1.pdf.

7. The representative of the Government of Nigeria, speaking on behalf of the African group, thanked the Office for producing the Compendium, including a table of contents and index, in both print and electronic format.
8. Speaking on behalf of her Government only, she said that her Government's observations regarding the limitation of the number of Government representatives to the Governing Body had not been taken into account. While a more flexible rule had been requested, the 15-person limit was still reflected in the final document. She opposed that limit on the grounds that sovereign countries were responsible enough to know what number of representatives was needed to best represent their interests.
9. The Legal Adviser explained that the 15-person limit on the number of accompanying regular or deputy Government members (paragraph 7 of the introductory note to the Compendium), formed part of the document approved by the Governing Body in November 2005. She noted that some flexibility existed, since the limit applied "except in exceptional circumstances". She further assured the Committee that the method of consultation used in the process of developing the Compendium would continue in the future.
10. The representative of the Government of Nigeria recognized that the 15-person limit had been approved by the Governing Body, but noted that the exception provided had not helped her country with regard to the current session of the Governing Body.
11. The Committee took note of the document and of the debate thereon.

II. Progress in the work to adapt the Manual for drafting ILO instruments (Second item on the agenda)

12. The Committee had before it a document submitted for information⁴ accompanied by a note⁵ on recent developments.
13. The Legal Adviser recalled that the Manual for drafting ILO instruments had been prepared in a print version by the Office of Legal Services at the request of the Governing Body following a meeting of a tripartite group of experts in January 2005. She reported that, in follow-up, the Office was adapting the Manual for ease of use in various formats. At its 294th Session, the Governing Body had received a demonstration of a pilot electronic version in a single language.⁶ That interactive version had since been further refined and was now available in English, French and Spanish, both on-line⁷ and on CD-ROM. Guided consultations were being offered to Governing Body members, and comments on possible improvements to the new version were welcome. The Office had also begun work to transform the text into a shorter, user-friendly "quick guide", and would continue to consult informally with constituents with a view to producing the guide for use at the International Labour Conference in June 2007.

⁴ GB.295/LILS/2.

⁵ GB.295/LILS/2/Inf.

⁶ GB.294/9(Rev.), para. 25.

⁷ URL address: <http://learning.itcilo.org/ilo/jur/en/index.htm>.

14. The Worker members appreciated the work done to date, and noted the information that consultations with the constituents would be pursued in finalizing the work. They looked forward to seeing the quick guide as soon as possible.
15. The Employer members welcomed the electronic version of the manual, and hoped that its use would contribute to consistency of style and content of ILO instruments. They continued to believe that a user-friendly guide was necessary and should be made available for ILO constituents as soon as possible. While noting the time frame of June 2007 given by the Office, they encouraged efforts to ensure that a draft guide would be available on a trial basis by June 2006. They endorsed the proposal for informal consultations with constituents, and wondered whether a date for informal consultations had been set at which a draft would be presented.
16. The representative of the Government of Nigeria, speaking on behalf of the African group, welcomed the electronic and hard copy versions. She looked forward to receiving the user-friendly guide.
17. The Legal Adviser emphasized the desire of the Office to continue consultations and explained that, while it would not be realistic to have a draft guide available by June 2006, the Office would continue consultations with the constituents, in particular on the shape of a pilot guide to be tested at the Conference in June 2006.
18. The Committee took note of the documents and of the debate thereon.

III. Standing Orders of the International Labour Conference: Practical arrangements for the discussion, at the 95th Session (June 2006) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work
(Third item on the agenda)

19. The Committee had before it a paper⁸ containing a proposal to withdraw the decision, taken at its 292nd Session (March 2005),⁹ on the provisional ad hoc arrangements concerning the discussion of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.
20. The Worker members expressed dissatisfaction with the quality and dynamics of the discussion on the last Global Report on forced labour. They considered, in particular, that the discussion had been transformed into a non-interactive plenary session with speeches and no debate, and without sufficient direction. As a consequence, the discussion had not helped to develop priorities and plans of action for technical cooperation. They therefore proposed to discuss the Global Report at the 95th Session of the Conference in a plenary session in the morning, with due attention to time management, in a tripartite discussion, and to organize, on the afternoon of the same day, a panel-type discussion focusing on best and worst practices in the elimination of child labour with a view to identifying the lessons learned since the last Global Report on child labour. Short interventions by panellists, including trade unionists, should be followed by an interactive debate.

⁸ GB.295/LILS/3.

⁹ GB.292/LILS/2 (& Corr.)

21. The Employer members considered that there was no need to modify the decision adopted by the Governing Body in March 2005. They strongly advocated that a definite and final format for the discussion of the Global Report at the International Labour Conference be decided in a timely manner. The current situation could surely be improved through consultations with ILO constituents, thus providing a more effective discussion of the Global Report.
22. A representative of the Director-General (Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector) noted that the ad hoc arrangements were quite flexible, permitting a plenary discussion of a half day or whole day; the details could be discussed for the 95th Session of the Conference.
23. The representative of the Government of Nigeria, speaking on behalf of the African group, recalled that the provisional ad hoc arrangements adopted at the 292nd Session of the Governing Body were intended to allow identification of areas in which technical cooperation activities of the Office would be useful to member States in the implementation of the ILO Declaration on Fundamental Principles and Rights at Work. She pointed out that, while the Office document referred to the “experience at the last session of the Conference”, it did not elaborate the point or explain how its proposed option would contribute to achieving the purpose of the Global Report. The decision point could therefore be considered only once a further analytical document had been prepared by the Office.
24. The representative of the Government of the United States, speaking on behalf of IMEC, recalled that seven earlier attempts in the LILS Committee to agree on arrangements aimed at giving prominence to and making the discussion on the Global Report meaningful and interactive had fallen short of the intended goal. IMEC therefore agreed that the Global Report should be discussed in the June 2006 Conference plenary, accompanied by a high-profile side event. That arrangement would apply only to the forthcoming session of the Conference. A long-term solution should be considered by the Working Group on the International Labour Conference, taking into account the discussions in the LILS Committee. She expressed interest in the Worker members’ proposal and invited other members to express themselves. IMEC renewed its call for an overall comprehensive review of the manner in which the Declaration follow-up was implemented, without calling into question or renegotiating the texts adopted in 1998.
25. The Worker members supported the IMEC proposal to consider long-term solutions for the discussions on the Global Report within the wider context of reforming the Conference, and reaffirmed the intention of the Workers’ group to place the discussion on the Global Report back within the framework of the Conference.
26. ***The Committee recommends that the Governing Body confirm the decision taken at its 292nd Session (March 2005) on the provisional ad hoc arrangements concerning the discussion of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.***

Second part: International labour standards and human rights

IV. Improvements in the standards-related activities of the ILO: A progress report (November 2005-March 2006)

27. A representative of the Director-General (Ms. Doumbia-Henry, Director of the International Labour Standards Department) introduced the Office paper.¹⁰ She recalled that, at its last session, the Governing Body had approved the outlines of a strategic orientation for standards and for implementing standards-related policies and procedure and, in particular, proposals contained in the document submitted by the Office, taking the discussions into account. The intention had been to report on tripartite consultations which were to take place as a follow-up to the November decision. The period from November to March was very short and the agenda had been very heavy, owing in part to the meeting of the Committee of Experts on the Application of Conventions and Recommendations and the holding of the Maritime Session of the International Labour Conference in February 2006. As a result, consultations had not been possible. The present document therefore outlined only in a factual manner significant developments and activities in the period November to March.
28. The Worker members stated that new areas of work in the Organization might offer innovative opportunities: for example, it would be important to know how the Office planned to use the decent work country programmes (DWCPs) in order to promote the ratification and implementation of standards. With regard to paragraph 2 of the document, they recalled that it had been decided that the Committee of Experts, the Conference Committee on the Application of Standards, and the Committee on Freedom of Association (CFA) would continue to revise their working methods internally and report back to the decision-making bodies. The LILS Committee could and should provide general guidance on enhancing the impact of decisions taken in those bodies. That was already the case with the Committee of Experts, which had again reviewed its working methods at its last session. The clarification of the criteria for footnotes and cases of progress was especially welcome and would allow all the constituents to understand the objective criteria used to select cases for the Conference Committee. It should be noted that the decision to put a footnote at the end of a comment was a collegial one and indicated the seriousness of a case. They also noted that the report of the Committee of Experts was not only a list of problems, but also referred to numerous cases of progress. They were concerned by the number of reports that had not been examined in the current year. It would be important to know whether the streamlined procedures on reporting had produced any results. The ILO should nonetheless give priority to an adequate budget in order to treat all comments, since governments that had taken the time to send reports needed full consideration.
29. The Worker members underlined the importance of the CFA and the need for adequate resources to ensure the optimal functioning of that body. The increased number of freedom of association cases indicated in paragraph 9 was not necessarily a cause for alarm; it might also reflect greater knowledge of the procedure. That might be a sign that the ILO was becoming more relevant, which should be its aim. The best way of decreasing the number of cases was to make sure that freedom of association was respected at the national and enterprise level.

¹⁰ GB.295/LILS/5.

- 30.** The Worker members congratulated the Office on its follow-up to the Conference Committee cases, but noted that only ten missions had taken place or were envisaged in response to 19 requests for technical assistance. They wished to know if the other missions had been prevented owing to lack of resources, lack of interest by governments, or other factors. They also congratulated the Office on the Maritime Labour Convention, 2006, whose accelerated amendment procedures were particularly innovative and merited broader discussion in the LILS Committee in relation to future instruments.
- 31.** They thanked the Office for the statistical analysis, while noting that their request for information was more on the patterns for ratification of Conventions adopted in the past 20 years. Statistics indicated the important success of the ratification campaign for the fundamental Conventions, and the particular efforts made by the African region in that regard. That underscored the need for a ratification campaign for the priority Conventions, a matter which could be raised at the two Regional Meetings due to take place in 2006 (Asia and Americas). For the next session of the LILS Committee, more detailed information on the reasons preventing ratification should be provided by the Office.
- 32.** The Worker members recalled that the Working Party on Policy regarding the Revision of Standards had completed its work and had identified nearly 80 up to date Conventions. It was now up to governments to implement those decisions by ratifying up to date instruments and denouncing those that were outdated. Perhaps those very governments advocating a permanent revision mechanism should be called on in the present Committee to indicate what actions they had undertaken to follow up on the recommendations of the Working Party. Similarly, the Worker members recalled that the 1997 constitutional amendment providing for the abrogation of Conventions had received only 85 ratifications. Governments which had called for more streamlined standards needed to do their homework and ratify the amendment. The Worker members welcomed the research project on the economic impact of standards, and recalled that the Office had already done work in that regard concerning occupational safety and health, social protection and collective bargaining.
- 33.** With regard to paragraph 20, the Worker members pointed out that in their view, no mandate had been given to the Office in November 2005 to hold consultations on the functioning of the supervisory bodies. Such discussions should be held within the supervisory bodies themselves. With regard to (b) of the point for decision, they proposed to add, after the words “basis of the consultations”, the words “with the Officers of the Committee”.
- 34.** The Employer members noted that only through an efficient and modern standards system that effectively fostered the possibility of employment creation would the ILO continue to be relevant to the modern world of work. They welcomed and supported the Office’s proposal of a new four-part strategic orientation. They also reiterated their desire, already expressed during the November session, and supported by several members of the Governing Body, to add a fifth component, which would be related to ongoing efforts to reviewing and updating standards. That could be done in a manner similar to that of the Working Group on Policy regarding the Revision of Standards.
- 35.** Concerning paragraph 2, they welcomed the prospect of consultations on possible improvements to standards-related activities and on the functioning of the Conference Committee on the Application of Standards. As already indicated by the Employer members in the past, the working methods and procedures of the Conference Committee must continue to focus on enhancing its transparency, objectivity, and, most importantly, credibility. In particular, ILO constituents involved in the work of the Conference Committee should have sufficient time to prepare their contributions. The Employer members noted with interest the advances made by the experts in improving their working

methods. They were nonetheless shocked to see that, as an outcome of their review on criteria used to footnote cases, the experts had this year proposed to invite an outstanding number of governments to present information to the Conference. The Employer members' understanding was that the experts' mandate should be limited to technical matters, leaving political decisions – such as the list of governments to be invited to present information to the Conference – to the Conference itself. In putting forward such a proposal, the experts had gone beyond their mandate. Concerning the important issue of reporting and its fundamental role in the ILO supervision of standards, they welcomed the proposal contained in paragraph 7 of the document, and endorsed the need to review the approach to supervision in the face of the increasing workload and the availability of resources. Paragraph 8 once again raised issues related to the Conference Committee; in that respect they recalled that, in their view, the Committee of Experts was and would remain a technical support body to the Conference, and it should be clearly understood that the Conference was the supreme body of the ILO. Concerning paragraph 9, they welcomed the ongoing discussions currently taking place within the CFA.

- 36.** They congratulated the Office on the adoption of the new Maritime Labour Convention, 2006. While other Conventions could not be expected to be adopted in the same manner, the new Convention had shown that better results could be obtained through hard work on reaching tripartite consensus and giving sufficient time for the social partners and governments to put their heads together to achieve a common goal. They hoped that sufficient resources would be allocated to promote ratification and understanding of this very innovative and modern instrument. Regarding paragraphs 13 to 15 concerning ratification trends of ILO Conventions, they reiterated their position that resources and efforts should continue to focus on the ratification of the ILO's fundamental Conventions. Until those eight Conventions were universally ratified, resources should not be allocated elsewhere. Another conclusion that could be drawn from the analysis related to the inconsistent attitude of governments when adopting Conventions in the Conference, and their subsequent attitude towards ratification. It was the Employers' view that Conventions which were not ratified should not have been adopted in the first place.
- 37.** With respect to research on the economic impact of international labour standards, the Employer members indicated that they placed the utmost importance on the matter and agreed that there was a need to analyse the specific economic dynamics of ILO standards, with a view to developing a wider approach to understanding the role of standards in economic development or stagnation. The analysis should seek to move beyond a classical approach to cost and benefit analysis and try to bring in a wider perspective which would take into account the role of standards in the formation of human and social capital, their impact on productivity, innovation and wage development, as well as their effects in relation to trade competitiveness, the rule of law, demand stimulation, public image and social stability. The Employers hoped that the research would be conducted with the Employment Sector, ACT/EMP, ACTRAV and with representatives of the international agencies with expertise in the matter, like the OECD. Finally, the Employers sought clarification from the Office regarding several issues concerning the promotional campaign of the 1997 amendment to the ILO Constitution.
- 38.** The representative of the Government of the United States, speaking on behalf of IMEC, emphasized the importance of tripartite consultations on all the issues that made up the "four-prong" strategic orientation for ILO standards and standards-related policies and procedures. IMEC looked forward to participating in the full range of consultations and to reviewing a further document in November 2006. With regard to the ILO's supervisory machinery, the speaker welcomed the fact that each of the main supervisory bodies was looking at its own methods of work. The ILO's supervisory machinery was unique in the international community, and all involved had a stake in ensuring that it functioned smoothly, objectively and transparently. The key to the supervisory machinery's

effectiveness, however – its ability to promote genuine progress at the national level – lay ultimately in its credibility. Any proposals for improvements must therefore be carefully considered in terms of their potential impact on the Organization’s long-term credibility. Furthermore, the bulk of the supervisory system relied on reviewing reports from governments. The present reporting scheme constituted a huge, and increasing, burden for all concerned. IMEC agreed that if the ILO was to continue to supervise the application of standards effectively, it had to find a way of restructuring reporting procedures.

39. Finally, regarding the research on the economic impact of standards, IMEC was concerned that, in light of the broad scope of the project and the complex issues involved, the proposed timetable might be unrealistic. The ILO should provide adequate time so that it could provide constituents with a truly useful framework for better understanding the relationship between international labour standards and economic development.
40. The representative of the Government of Argentina, speaking on behalf of GRULAC, expressed appreciation for the efforts made to achieve systematization which would improve overall knowledge of the situation with regard to the international labour standards system. GRULAC endorsed the basic document’s approach along the lines that the relevance and effectiveness of international labour instruments did not derive exclusively from their normative aspects, and emphasized the importance of taking the economic and social context into account. That focus would allow an integrated vision leading to a more coherent assessment of the supervisory system, which would be able to assess in a more integrated way the efforts of countries to comply with their international obligations. It would also provide an opportunity for the Office to adapt its activities to the limits and mandates assigned to it.
41. With regard to the CFA, GRULAC was interested in ensuring that it continued to examine its working methods in order to improve its functioning and effectiveness. In particular, the Committee needed to establish clear quorum rules so as to ensure the presence of a majority of its members, both in discussions on complaints and in the adoption of its reports. This went hand in hand with the idea that a State’s conduct with regard to the standards should be assessed not only from the point of view of supervision but also taking into account the actual application of the standard in question, its dissemination, as well as technical cooperation and efforts to strengthen the capacities of the country concerned.
42. GRULAC supported the initiative according to which the impact of international labour standards would be assessed not only from the economic aspect of “costs and benefits” but also from a more anthropocentric perspective, which would gauge the importance of a given standard in the context of economic and social development, including productive employment. The Maritime Labour Convention, through an integrated approach, had made it possible to include not only specific guarantees in relation to seafarers’ activities, but also to extend protection to include the fundamental human rights at work.
43. GRULAC viewed positively the explanation of the Committee of Experts regarding the terms “satisfaction” and “interest” in cases of progress, which would make it possible to gauge the scope which the Committee gave to those criteria and suggest courses of action that would promote compliance with standards. GRULAC was also favourable to making more extensive use of footnotes, following a collegial decision, and emphasized the importance in that context of the principle that the Committee must comprise an appropriate balance of experts from all geographic regions, as well as a balance between developed and developing countries, so as to ensure adequate representation of different legal, economic and social systems. The speaker recalled the importance of practical knowledge of the application of a given Convention once ratified, which was demonstrated by the increase in ratifications after the adoption of the Declaration in 1998.

44. With regard to the point for decision in paragraph 21(a) of the document under discussion, GRULAC considered that it was unclear and suggested changing it along the following lines: “take note of the document and of the comments made by the members”. With regard to the consultations referred to in clause (b) of the point for decision (paragraph 21), GRULAC wanted them to have a clear and precise frame of reference based on the discussion of the document that had taken place during the day and the discussions that had taken place at the LILS meeting in November 2005.
45. The representative of the Government of Nigeria, speaking on behalf of the African group, expressed concern at the limited number of experts in view of the increasing workload, and the alarming increase in freedom of association complaints and pending freedom of association cases. She inquired when those cases would be concluded. The African group therefore supported a review of the supervision procedures with a view to providing optimal service in the face of an increasing workload. She congratulated the Office on the adoption of the Maritime Labour Convention, which would facilitate the inspection by port States of labour standards on ships. She also noted the ratification rate of over 90 per cent in Africa with regard to the fundamental Conventions, and acknowledged the support and assistance which many countries in the region had received from the Office. The African group also supported the research proposal on the economic impact of international labour standards. With regard to paragraph 8 regarding consultations on improvements to the functioning of the Conference Committee, the speaker asked for clarifications and whether the Conference Committee planned to liaise with the Working Group on the International Labour Conference in order to avoid possible duplications of work.
46. The representative of the Government of Mexico endorsed the statement made on behalf of GRULAC. However, given that paragraphs 3 to 9 of the paper presented by the Office referred to the improvement and strengthening of the supervisory system, her delegation wished to stress the importance Mexico attached to the report of the Committee of Experts. The Office paper set out some of the criteria whose scope had been agreed on within the Committee of Experts, but other innovative aspects had not been referred to. She welcomed the early publication of the report of the Committee of Experts. The report in question was the primary source for the supervisory system and therefore any innovations in that area deserved comment, taking into account also those aspects not referred to in the report of the Office. Her delegation would put forward its comments when the planned tripartite consultations took place, and drew attention to the need to clarify the concept “country-based approach” based on paragraph 8 of the Committee of Experts’ report.
47. She expressed her delegation’s concern at the danger that a supervisory system which was seen as highly credible could be weakened should it begin to adopt approaches that diverted it from its objectives. The speaker, while supporting the statement made on behalf of GRULAC regarding the need for a clear and precise framework of reference for tripartite consultations in that area, reiterated the statement made by her delegation at the meeting in November 2005, to the effect that the Conference Committee adopted simple conclusions that had not been put to the vote, but adopted by consensus. Those conclusions were guidelines to the improvement of the application of a ratified Convention. While supporting the statements made by the Worker members, she felt that there was a need to examine the activities of the CFA, in particular the increase in the number of complaints and the tendency to concentrate too much on Latin America, and to examine whether that increase was due to the proliferation of cases not requiring the intervention of an international body or to the high quality of the Committee’s work.
48. The representative of the Government of Morocco endorsed the statement made on behalf of the African group. Referring to paragraph 9 of the document, which highlighted the considerable increase in the number of new complaints filed before the CFA, she stated that certain disputes had been examined by the Committee for a number of years, even

though they had, in the meantime, been resolved. There was, therefore, a need to make the Committee's procedures more flexible.

- 49.** The representative of the Government of France expressed agreement with the statement made on behalf of IMEC. The document contained very encouraging signs of the ILO's willingness to reform its standards-related activities, and that was borne out by recent developments regarding the updating of the working methods of the supervisory bodies responsible for the application of standards. Her Government attached great importance to the primacy of law and the standards system of the ILO, which was unique in the multilateral system. In the light of the increase in the workload of both the Office and the member States, her Government was in favour of modernizing the reporting system, while regretting that no concrete proposals had as yet been put forward to simplify it. In that regard, the speaker suggested using national benchmarks which had been established within the framework of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Her Government also welcomed the adoption of the new Maritime Labour Convention and considered that existing standards in other sectors should also be consolidated. It was essential to provide member States that ratified the Maritime Labour Convention with the means to apply it. Her Government intended to contribute to such efforts, within the framework of its technical cooperation programme with the ILO. As to the planned examination of the economic impact of standards, there was a need to establish the link between compliance with standards and productivity, in order to ensure full recognition of the added value of applying the standards. That was also true of the fundamental standards, and the Government of France also intended to make that an objective of the programme to support the implementation of the ILO Declaration (PAMODEC) financed by France.
- 50.** The representative of the Government of South Africa welcomed the document but said that an earlier distribution would have facilitated analysis. To gain a better understanding of the working methods of the Committee of Experts, some additional information was necessary. It would be interesting to know how exactly the Committee of Experts dealt with over 2,000 files in 18 working days, in addition to adopting a general report and a General Survey. Consultations would be important to achieve a consensus on the working methods of the Conference Committee, as would an integrated analysis that would take into account procedures adopted by the CFA. His delegation also welcomed the Maritime Labour Convention, which was drafted in plain language, a feature which should be considered in future labour Conventions. He noted the impact of the ratification campaign for the fundamental Conventions and the considerable efforts of the African region in that regard, despite severe economic challenges.
- 51.** The representative of the Government of the Bolivarian Republic of Venezuela endorsed the statement made on behalf of GRULAC, and welcomed the clarification of the criteria used by the Committee of Experts when expressing satisfaction in certain cases, as well as the fact that significant changes in national policy or practice had been taken into account. In the case of Venezuela, such changes had led to social inclusion and progress for the majority of the population. As to ratifications, in 2001 and 2005 his Government, after 16 years of inactivity, had ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and had urged countries that had not ratified the fundamental Conventions to do so. As to the consultations recommended by the Governing Body, he regretted that it had not been possible to carry them out in a timely fashion. With regard to the CFA, he felt that there had for years been a large backlog of complaints. The Venezuelan Government fully recognized the value of activities to promote the Conventions, the Decent Work Agenda and the road towards renewal, trust and visibility taken by the Standards Department. The Venezuelan Government felt that the capacity of the CFA should be increased to allow it to examine both old and recent complaints in an objective, transparent and balanced manner.

It would appreciate any efforts made by the Committee to improve its procedures and working methods in the light of national conditions and supporting documents presented and that would determine its quorum.

- 52.** The Employer members added some further comments regarding paragraphs 3 to 9 of the document. It was essential to determine the best forum for discussions on the working methods of the supervisory bodies. The point of such deliberations should be to create efficient bodies which would ensure both accountability and the implementation of their recommendations. Those bodies also needed to be impartial and credible. For the CFA, the suitable forum was generally the CFA itself, at least in the first instance, as it was tripartite. The Committee of Experts, however, was not tripartite or appointed in an appropriate tripartite manner. Experts could be nominated in a tripartite context after more effective consultations, as there was a need for continuity and fresh blood in the Committee to ensure greater efficiency in ensuring compliance. In a Committee with long-standing members, a fresh approach to its working methods was unlikely. That might explain some of the long-standing or unresolved cases before the Committee of Experts. The Employer members also took note of the many pending cases before the CFA. While recognizing that some of the interim reports in question were the result of ongoing dialogue with governments, there needed to be greater discipline among the members of the CFA in establishing final reports, which carried greater weight in the national jurisdictions to which they applied.
- 53.** The representative of the Government of Japan expressed her support for the statement made on behalf of IMEC. She noted that the present reporting procedures were burdensome for the Office and for governments, and that the system, and the reporting interval, for example, should be reviewed. She expressed appreciation for the criteria for cases of progress and footnotes, and expected that they could make the selection of cases before the Conference Committee more transparent.
- 54.** The representative of the Government of the Russian Federation underlined the need for transparency in the supervisory procedures and a periodic review of its working methods. With regard to the Conference Committee, working methods should be discussed in a tripartite setting, either in the Working Group on the International Labour Conference, or in the Conference Committee itself. The reporting system had to be simplified, as the reporting burden was great. He welcomed the Maritime Labour Convention and hoped that the Office would give priority to the development of suitable guidance for port State control, as called for by the relevant resolution at the Maritime Session of the International Labour Conference. He also agreed that technical cooperation should take into account the comments of the supervisory bodies and the specific needs of countries. He welcomed the research on economics and standards and the revised Handbook of procedures, which he hoped would be translated into other languages, including Russian.
- 55.** The representative of the Government of Kenya said that efforts to improve the working methods of the Committee of Experts inspired optimism. It would be useful to have more detailed information as to tangible solutions for addressing the large workload of the experts, as well as the increasing workloads of the Conference Committee and the CFA. He welcomed the Maritime Labour Convention, in particular its simplicity of language and structure.
- 56.** The representative of the Government of Spain indicated that in his view, the LILS Committee was the cornerstone of the Governing Body in both standards-related and supervisory terms. He welcomed the undertaking to improve the supervisory system. That meant changing with the times, which was what had enabled the ILO since 1919 to avoid becoming dated. Improvement would involve dialogue and consultation. He considered that the Maritime Conference was an example of that, and that the problems that had

sometimes occurred during sessions of the Conference had not occurred at that session, which had been the first serious and pragmatic attempt to give an already globalized sector a social dimension. He understood very well that the consultations had not taken place because the staff of the department in question had been assigned to the Maritime Conference. With regard to the Conference Committee, he said that the result of the consultations was binding and that the decision was a matter for that Committee, which had the final authority. Regarding the CFA, he said that there was a subject still pending that had led to disagreement in 2005 and that efforts would be needed to balance the composition of the Committee. With regard to the point for decision (paragraph 21), he considered that the term “invite” should be understood as “urging” the Office to carry out consultations and then produce a document.

- 57.** The representative of the Government of Cuba said that he fully endorsed the statement made on behalf of GRULAC and welcomed the new Maritime Labour Convention, 2006. With regard to footnotes referred to in the document, the speaker considered it important that the practice had been extended. He considered that the footnotes inviting the Conference Committee to examine the situation with regard to application in particular countries bore directly on the question of the composition of the Committee of Experts. It was essential to ensure not only a geographical balance but also a balance between developed and developing countries. He emphasized that the process of selecting members of the Committee needed to be more transparent.
- 58.** The Employer members said that they were satisfied with the quality of discussions in the Committee, and endorsed the point for decision, while hoping that the views they had expressed would be taken into account.
- 59.** The Worker members, responding to comments that the reporting system imposed a heavy burden on governments, recalled that the supervisory mechanism depended on accurate information in order to function. They did not agree with the Employer members’ suggestion of a fifth element in the strategy on standards, namely a permanent standards revision mechanism. Before spending any more resources on such a mechanism, governments had to follow up on the recommendations of the Working Party on Policy regarding the Revision of Standards. Action was needed at the international and national level. They noted with regret the Employers’ reference to the Committee of Experts as a technical support body; the experts had a central and key function in the ILO’s supervisory system.
- 60.** With regard to comments made by the Employers about the composition of the Committee of Experts, the Worker members recalled that four new experts had been appointed in November 2005, and that the current Committee of Experts represented all regions and numerous developing countries. The Worker members doubted if a different composition would lead to different comments in the experts’ report. The experts should not be nominated on a tripartite basis, as it was important for them to be independent and to work in a personal capacity. They also called for resources to be made available for a ratification campaign on priority Conventions, as well as further efforts to ensure the adoption of the constitutional amendment of 1997.
- 61.** With regard to the research on the economic impact of standards, the Worker members recalled that the Global Employment Agenda sought to promote not just any employment, but decent employment in which international labour standards and workers’ fundamental rights went hand in hand with job creation. Regarding the number of pending cases before the CFA, that, in the view of the Worker members, was due primarily to governments failing to act on the Committee’s recommendations.

62. A representative of the Director-General (Ms. Doumbia-Henry) responded to concerns raised by the Worker members regarding the reference in paragraph 2 of the document to consultations on the functioning of the Conference Committee and on its strengthening. She recalled paragraph 22(d) of GB.294/LILS/4 which read: “Consultations with a view to streamlining both the work of countries reporting under article 22 of the Constitution and the action of the ILO supervisory bodies and thus to maintaining an effective and efficient international supervisory system.” That paragraph drew on the elements contained in the Office document under the second component of the standards strategy concerning the supervisory system. Paragraph 15 of that document stated:

The Conference Committee on the Application of Standards has its basis in article 23, paragraph 1, of the ILO Constitution. In recent times, a number of comments have been made concerning its functioning. It would appear to be necessary that consultations continue on how to strengthen the functioning of this important body. The Office proposes that consultations on this matter be undertaken so that at least some desired improvements can be identified and, if possible, applied as of the next session of the International Labour Conference.

63. She noted that the Employer members had expressed concern about the footnotes developed by the Committee of Experts, considering that it was beyond the Committee’s mandate to request a large number of governments to send information to the Conference. In that regard, it was important to set the practice in an historical context. In fact, from 1926 to 1954, the Committee of Experts examined reports submitted each year on all the Conventions ratified by countries and the Conference Committee examined all those reports. The Committee of Experts continued to examine such reports until 1959, when it put forward a proposal to the Governing Body, which accepted, that government reports should be examined in a two-year cycle. The two-year reporting cycle was introduced in order to lighten the burden imposed on governments in supplying reports, to ease the task of the International Labour Office in the essential service it renders to the Committee of Experts and the Conference Committee and to ensure that the effectiveness of the work of the Committee of Experts would not be seriously prejudiced by its inability to deal effectively with the volume of material coming before it (Report III, Part IV, 43rd Session of the ILC, 1959, paragraph 13). In that same year, the Committee of Experts also made proposals to include two types of footnotes in its report. The Committee at the time explained very clearly that “the terms of that footnote, and the special reference it makes to supplying ‘full particulars to the Conference at its 43rd Session’, are not intended in any way to imply that the Conference will not wish, in accordance with its usual practice, to receive information from governments on the other observations which the Committee has made” (idem, paragraph 15). Again, when the Committee of Experts decided to respond to concerns regarding its transparency and the need for criteria for footnotes, the Committee pointed out in its report that the criteria for footnotes adopted by them did not in any way prejudice decisions of the Conference Committee. They were undertaking a quasi-judicial function, not a political one, which was a role assigned to the Conference Committee.
64. In response to a request for clarification on the 659 reports which had been deferred from the last meeting of the Committee of Experts, the speaker noted that in the current year the Committee of Experts had to deal with 2,407 reports, a significant increase from previous years. That figure represented 1,510 reports of the total of 2,067 received for examination by the Committee of Experts, and 897 deferred reports (out of a total of 999) from previous years. If the Committee had had to deal with all the reports received plus all the deferred reports from previous years, it would have had to deal with 3,066 reports. Out of the total of 659 deferred reports, some 414 were received too late to be examined, i.e. outside the deadline for receiving reports, while 245 were reports that had needed to be deferred from earlier sessions, as they could not be absorbed by the Committee. The Committee of Expert’s session in November-December 2005 had been extended by three days to allow it more time to deal with the deferred reports. The Office continued to

receive late reports due last year, and the Conference was normally given an update on reports received during the International Labour Conference.

65. With regard to the statistical annexes and the request for further analysis of impediments to ratification, the Office could continue to examine the matter and would welcome any elements the Workers could provide. With regard to research on the economic dynamics of standards, the speaker indicated that one of the first steps in that project would be a literature survey that brought together all ILO information both at headquarters and the field, including all documents before ILO bodies. The intention was also to associate an external consultant in the work. The first internal meeting had resulted in a number of constructive suggestions on how to go forward with the project. There was a clear understanding from the first meeting that the timetable was too optimistic and that the Office would need more time to be able to undertake the necessary work to ensure that it could come out with a valid, credible and high-quality product benefiting from the best input, both internal and external. Concerning the *Handbook of procedures*, it would be translated into other languages as soon as possible.
66. The Legal Adviser provided information on the campaign for the ratification of the 1997 amendment to the ILO Constitution. Thirty-four ratifications or acceptances were needed for the amendment to reach the 119 ratifications required for it to enter into force. An information brochure in question-and-answer format had been prepared and had been sent with a covering letter by the Director-General to the member States concerned. Three new ratifications had been received since the launch of the campaign, and one intention to ratify had been signalled. The forthcoming Regional Meetings would also be used to promote ratification. The Office could prepare a paper, for November 2006, on the campaign and explore the involvement of the constituents. At the same time, the Office was promoting the ratification of the Convention on the Privileges and Immunities of the Specialized Agencies, ratification of which facilitated technical cooperation delivery and the organization of ILO meetings. An information note could be provided for the Committee at its next session. A representative of the Director-General (Ms. Doumbia-Henry) added that field directors and standards specialists had been urged to make the ratification of the constitutional amendment a priority, which was reflected in two of the recent ratifications.
67. The Worker members pointed out that according to paragraph 20 of the document, “the Office intends to commence consultations on all the issues contained in the document submitted to the 294th Session of the Governing Body concerning the strengthening of the supervisory system”. The November document, in paragraph 22, had in fact listed eight different topics for consultations, yet the present document focused consultations solely on the supervisory system. There had been no agreement to make this the priority topic for consultations. The Worker members also explained that what they had suggested was consultations with the Officers of the Committee on the terms of reference of the forthcoming document.
68. A representative of the Director-General (Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector) proposed to amend the conclusions to take into account the changes introduced by the Committee members. The point for decision would comprise four elements, namely, that the LILS Committee takes note of the document and the discussion of the present Committee; recalls the decision that had been taken in November 2005; emphasizes the pursuit of tripartite consultations based on the present discussion and the discussion and decision of November 2005; and invites the Office to submit a paper in November 2006 on the basis of the present discussion and the discussion and the decision of November 2005.
69. The Committee agreed to the Office proposal.

70. *The Committee on Legal Issues and International Labour Standards, taking note of the Office paper and the comments made during the discussion, and recalling its decision taken at the 294th Session (November 2005) of the Governing Body, contained in paragraph 90 of document GB.294/9(Rev.), recommends to the Governing Body that it invite the Office to:*

- (a) hold tripartite consultations based on the present discussion and on all issues before the Committee as reflected in the decision taken in November 2005; and*
- (b) submit at its next session a paper based on the present discussion and on all issues before the Committee as reflected in the decision taken in November 2005.*

V. General status report on ILO action concerning discrimination in employment and occupation

- 71.** The Governing Body had before it a document on ILO action concerning discrimination in employment and occupation.¹¹
- 72.** The Employer members commended the Office on the new format of the document, and acknowledged the importance of the issue of discrimination in employment and occupation. However, they queried whether the LILS Committee was the most appropriate forum to discuss the matter. They suggested that, in order to give wider exposure to the work of the Office on discrimination, a dedicated web page on the ILO web site could be established.
- 73.** The Worker members said that the issue of discrimination was not only of fundamental importance but also of growing importance, and they therefore welcomed the Office document. While noting the value of changing the format of the document, they asked that identification of vulnerable categories of workers and the gender aspect be brought out more clearly. With respect to gender discrimination, they stated that the topic should be an item on the agenda of the International Labour Conference. Concerning the section of the paper on the situation of workers of the occupied Arab territories, the Worker members expressed the view that more information was needed, in particular regarding the real situation of the workers and the work programme of the Office.
- 74.** The Worker members stressed the high ratification rates of the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well as the importance of the comments of the Committee of Experts regarding discrimination. They invited the Office to continue to collaborate with countries, as had been done with China on Convention No. 111, to secure universal ratification of those Conventions, and in addition to encourage member States voluntarily to commit themselves to supervision on grounds of discrimination beyond those listed in Article 1(1)(a) of Convention No. 111. They also noted the need to continue the concerted efforts to promote the ratification of the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183).
- 75.** The advice and assistance on labour legislation regarding anti-discrimination and equality was highlighted by the Worker members, including the promotion of gender impact

¹¹ GB.295/LILS/6.

analysis. With respect to discrimination on the basis of HIV/AIDS, they suggested that the issue be taken up as a standard-setting item. The importance of tripartite institutions in addressing discrimination was noted, as well as the training of judges and labour inspectors. Concerning the gender audit of the ICFTU, they noted that it was the first time an international body coming from the social partners had decided to undertake such an audit in order to improve the representation of women. The key role of workers' and employers' organizations in applying principles of non-discrimination was also emphasized, including at the workplace level, and through collective bargaining. However, in order for them to take on such a role, freedom of association must be ensured. They welcomed the Office's efforts to coordinate with other United Nations bodies, and suggested that member States should be encouraged to ratify the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). The Worker members concluded by raising concerns regarding the absence of a single institutional unit in the Office to coordinate work on discrimination. The Office was invited to give special attention to the important issue of discrimination, and to ensure that adequate resources were made available to support work in that area or reconsider its decision to eliminate such a unit.

- 76.** The representative of the Government of Jordan, speaking on behalf of the Arab group, expressed support for the statement of the Worker members regarding the need for more information concerning the situation of workers in the occupied Arab territories. The term used in the United Nations was "the situation of the occupied Palestinian territory and other occupied Arab territories". The issue went beyond the scope of the document before the Committee, and involved the promotion of social welfare, peace and security. An ILO mission should be sent to the region as soon as possible to assess the situation and to submit a report to the next session of the International Labour Conference. He applauded the efforts of the Director-General and expressed the hope that the ILO would continue its work in that area.
- 77.** The representative of the Government of the United States noted that the action plan, approved by the Governing Body in November 2003 in the context of the follow-up to the Global Report on discrimination, provided for the establishment of a global task force on discrimination, with the mandate of improving coordination and synergy among various ILO units and the field.¹² The Office had established a pay equity task force as a first step in that direction, and there was an advisory board to assist in the preparation of the 2007 Global Report on discrimination. Her Government was concerned that there was still apparently insufficient coherence and coordination within the Office regarding the subject. The Office should take the necessary steps to ensure that the broad function to be assigned to the global task force on discrimination would be accomplished, in accordance with the Governing Body's directive in this regard.
- 78.** The representative of the Government of Honduras, speaking on behalf of GRULAC, said that the issue of discrimination was of central importance to the Organization, and the report was essential for following all the initiatives and programmes of the Office to eliminate discrimination in employment and occupation. It was clear from the detailed information in the report that the fight against discrimination went beyond the world of work, although the worst manifestations were often linked to employment and occupation. She emphasized the need to share, integrate and coordinate activities, not only within the ILO but also with other international organizations, governments, workers and employers, as well as non-governmental organizations that had a common interest in that domain. Noting that the countries in the region had a high level of ratification of the relevant Conventions, and highlighting the progress made where ILO technical assistance had been

¹² GB.288/TC/4.

made available, her group looked forward to the Office's response to other requests for technical assistance in that area. She noted that there was still a long way to go with regard to the adoption of effective workplace measures or the sharing of knowledge and materials on job evaluation, the cost and benefits of equal pay legislation, or the adaptation of jobs to the situation of workers with family responsibilities, the latter being a key to achieving genuine equality of opportunity and treatment between men and women. She further noted that the International Observatory for Labour Law was an invaluable tool to support the analysis of the situation of migrant workers, indigenous peoples, and persons affected by HIV/AIDS. With regard to the limited resources available for responding to the increasing demand for assistance in the area of discrimination, GRULAC was of the view that the Governing Body should give priority to those topics, including equality of opportunity and treatment, which were crucial to achieving decent work and ensuring respect and dignity for workers.

- 79.** The representative of the Government of Nigeria, speaking on behalf of the African group, supported the call for integrated strategies, which would take into account the links between discrimination, poverty, forced labour and child labour. The situation in the occupied Arab territories remained of utmost concern and the ILO was encouraged to continue its assistance to the workers concerned. Referring to the comments of the Committee of Experts regarding the exclusion of some categories of workers from national equality policies, the speaker pointed out that the application of the Conventions in the informal sector remained a challenge. However, the increasing number of ratifications of fundamental Conventions showed the political will to improve working conditions for all, with implementation requiring support through ILO technical assistance. A number of African countries had already received legislative assistance, including concerning equality. Further work by the Office was needed to promote better gender equality policies, especially through the strengthening of labour administration systems. The Turin Centre's training courses for judges were highly commendable and should be expanded to include aspects of all the fundamental Conventions. Finally, the representative informed the Committee of a number of initiatives undertaken by African countries, with ILO assistance, to promote the employment of disabled workers and address the HIV/AIDS pandemic.
- 80.** The representative of the Government of Mexico supported the statement made on behalf of GRULAC and highlighted the importance of ILO assistance in drafting legislation and policies on discrimination. In that regard, the representative thanked the Government of Spain for its financial support to the More and Better Jobs for Women project and referred to the many activities carried out by the Government to mainstream gender in the world of work. She commended the Office for the activities to promote workplace policies, and highlighted her Government's agreement with the National Council for Maquiladora Industries.
- 81.** The representative of the Government of China said that the recent ratification of Convention No. 111, after six years of cooperation with the ILO, was a significant step for her country. The Convention was important for promoting social stability and harmony, and for ensuring equality at work, healthy development of the labour market and sustainable development more generally. However, ratification alone was not sufficient. In order to protect the equal rights of workers, effective implementation was necessary. In that regard, continued cooperation with the ILO was crucial to support the strengthening of national laws and policies and enforcement mechanisms. Further measures were also needed to regulate recruitment agencies and undertake training and awareness-raising, in particular with regard to gender issues, the situation of workers migrating from rural areas and ethnic minority groups. Further activities to address sexual harassment at work were planned. In conclusion, the representative stated that her Government hoped that the Office

would allocate the resources necessary for continued cooperation on those issues with a view to facilitating the effective implementation of Convention No. 111.

- 82.** The representative of the Government of the Russian Federation stressed that the ILO had an important role to play in the elimination of discrimination and the promotion of equality. Positive results had been achieved, particularly with respect to ratifications. He noted that while practically all countries prohibited discrimination in their legislation, many people remained disadvantaged as a result of subtle forms of discrimination. In that regard he pointed to the 2003 Global Report and the recent reports of the Committee of Experts drawing attention to indirect discrimination on grounds of ethnic origin, including language, and political opinion. The ILO should continue to address those issues, including through cooperation with member States and other international organizations, as well as undertaking research.
- 83.** The representative of the Government of Spain, referring to the next meeting of the Inter-Parliamentary Union, requested the Office to consider undertaking a study on violence against women in the workplace, an issue that his delegation considered even more worrying than discrimination. He welcomed the list of publications in the appendix and stated that in the future it would also be useful to have a list of good practices and legislation.
- 84.** The representative of the Government of Australia welcomed the opportunity to discuss future action by the ILO to eliminate discrimination and promote equality. The paper correctly stressed the importance of member States having a range of strategies. It was evident that a more integrated approach was needed to help Members to achieve more substantial progress. Her Government agreed that technical assistance programmes were central to promoting ratification of relevant ILO Conventions, which was indeed an important strategy. That required stronger links between NORMES and the other units carrying out technical assistance, with a view to feeding advice and information on international labour standards into the strategic objectives and key performance indicators of technical assistance programmes.
- 85.** The representative of the Government of Finland said that while his delegation understood the historical context of the document before the Committee, the question remained whether this document should not be merged with the Global Report on discrimination. The Employer members expressed their support for the statement of the representative of the Government of Finland and expressed the hope that the Office would also like to take note of the Employers' concerns.
- 86.** A representative of the Director-General (Mr. Tapiola) confirmed that a mission to the occupied Arab territories had been appointed by the Director-General and would take place shortly. He noted further that the mission report would be discussed at the next session of the International Labour Conference. Another representative of the Director-General (Ms. Doumbia-Henry) noted that a decision as to whether HIV/AIDS could be taken up as an item for a future discussion by the International Labour Conference would depend on the outcome of the discussion in the plenary of the Governing Body regarding the agenda of the 2008 session of the International Labour Conference.¹³ She noted that should there be an indication of interest from the Governing Body, a full proposal on HIV/AIDS as a possible future agenda item would then be prepared by the Office for consideration by the Governing Body. While noting the specific request for research on violence against women in the workplace, she drew attention to the code of practice on workplace violence in the services sector and measures to combat the phenomenon. Concerning the issue of the

¹³ GB.295/2, para. 7.

coordination of work on discrimination, she assured the Committee that, following the recent reorganization of the International Labour Standards Department, the work that had been undertaken in the past regarding supervision of the relevant standards on discrimination and promotional activities was still being carried out by the Department in the same manner as before. The issue raised in the document, she noted, concerned the improvement of coordination of the wide range of activities being undertaken across the Office, and that would be pursued further by the Office, taking into account the discussion of the present document.

87. The Committee noted the information in the document.

VI. Form for reports on the application of unratified Conventions and Recommendations (article 19 of the Constitution): The Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84)

88. The Committee had before it a document¹⁴ on the proposed report form on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84), to be used as a basis for the reports to be submitted by member States in accordance with article 19 of the Constitution.

89. The Worker members said that public procurement was a matter gaining increased attention, and they therefore welcomed the first General Survey on the issue. They proposed an amendment in point II(3) of the draft report form to insert the words “any intention to ratify the Convention or” after the words “Please state, where appropriate,” in accordance with the conclusions of the Working Party on Policy regarding the Revision of Standards. They also proposed to add a new point II(4) to read: “Please state, where appropriate, if the possible ratification of the Convention has been discussed on a tripartite basis, as provided by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and, if so, when”.

90. The Employer members, while in general agreement with the proposed amendments, suggested that the words “, including ratification” should be added at the end of point II(2), and consequently, point II(3) of the draft report form should be left unchanged.

91. The representative of the Government of Kenya stressed the importance of timely and comprehensive reporting for effective management, decision-making, and dissemination of information to stakeholders. He commended the Office for making the report form available on its web site so as to enable member States to submit their replies in electronic format, which was convenient and timely. He expressed his Government’s agreement with the proposals made by the Worker members.

92. The representative of the Government of Nigeria, speaking on behalf of the African group, supported the statement made by the representative of the Government of Kenya and endorsed the proposals of the Worker members as amended by the Employer members.

93. The Worker members indicated their acceptance of the proposal of the Employer members to include an express reference to the possible ratification of the Convention in point II(2), instead of point II(3), of the draft report form.

¹⁴ GB.295/LILS/7.

94. The Committee adopted the report form as amended.

95. *The Committee recommends to the Governing Body that it adopt the report form on the application of unratified Conventions and Recommendations (article 19 of the Constitution): the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84), as amended (see appendix).*

VII. Other questions

Agenda of the next session of the Committee on Legal Issues and International Labour Standards

96. A representative of the Director-General (Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector), in accordance with usual practice, summarized the items that would be put before the Committee at its next session, as far as had already been determined, namely: progress in developing a quick guide to the Manual for drafting ILO instruments; the ratification campaign on the 1997 amendment to the ILO Constitution; status of privileges and immunities of the International Labour Organization in member States; improvements in the standards-related activities of the ILO; ratification and promotion of fundamental ILO Conventions; and the choice of instruments on which reports should be requested in 2008 and 2009 under article 19 of the Constitution.

Geneva, 27 March 2006.

Points for decision: Paragraph 26;
Paragraph 70;
Paragraph 95.

Appendix

**Report form for the following instruments:
Labour Clauses (Public Contracts) Convention,
1949 (No. 94), and Labour Clauses (Public Contracts)
Recommendation, 1949 (No. 84)**

**Appl. 19
C. 94, R. 84**

Geneva

2006

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organization relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

5. In the case of a Convention:

...

- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal government shall:

...

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;

- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

...

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present form of report. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

Report to be made no later than 30 April 2007, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of, on the position of national law and practice in regard to the matters dealt with in the following instruments:

Labour Clauses (Public Contracts) Convention, 1949 (No. 94),¹
and

Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84)

adopted by the International Labour Conference at its 32nd Session (Geneva), 1949.²

I. Please indicate whether any legislative, administrative or other provisions exist in your country in regard to all or some of the matters dealt with in the Convention and the Recommendation.

- (1) If so, please give in summarized form information concerning the legislation, regulations and practice existing in your country with respect to workers' protection in the context of competitive bidding for public contracts, which may facilitate an appreciation of the extent to which effect has been given to the Convention and the Recommendation.
 - (a) Please indicate if there are any specific national laws or regulations providing for the insertion of labour clauses in public contracts for the purpose of ensuring to the workers concerned wages, hours of work and other working conditions which are not less favourable than those established for work of the same character in the same area by either collective agreement, arbitration award or national laws or regulations.
 - (b) Please indicate how is defined in national law or practice the term "public contract", or any other similar term used to designate contracts awarded by a public authority for the construction of works, procurement of equipment or supply of services.
 - (c) Please indicate whether the relevant legislation applies to contracts awarded by authorities other than central authorities (e.g. provincial, municipal or other local authorities) or to work carried out by subcontractors or assignees of contracts.
 - (d) Please specify whether the obligation to include labour clauses in public contracts applies to contracts involving the expenditure of public funds exceeding a specified limit and, if so, please indicate this limit.
 - (e) Please state whether any categories of persons (e.g. managerial personnel or other persons occupying positions of technical or scientific character) are excluded from the scope of application of all or any of national laws or regulations regarding labour clauses in public contracts and, if so, please specify the reasons for their exclusion.
 - (f) Please indicate the terms of any standard labour clauses currently in use and specify whether these terms have been determined in consultation with representative employers' and workers' organizations. More concretely, please specify whether labour clauses prescribe, either directly or by reference to appropriate provisions contained in laws or regulations,

¹ Governments of countries which have ratified the Convention and from which a report is due under article 22 of the Constitution will use the present form only with regard to the Recommendation. It will not be necessary to repeat information already provided in connection with the Convention.

² The texts of the Convention and Recommendation are appended.

- collective agreements or arbitration awards, labour conditions such as: (i) the normal and overtime rate of wages to be paid to the workers concerned; (ii) the number of hours that may be worked in any day, week or other specified period; (iii) the average number of hours that may be worked by shift workers; (iv) the averaging of hours of work, as the case may be; (v) holiday and sick leave provisions.
- (g) Please specify the measures by which the persons tendering for contracts are made aware of the terms of the clauses (e.g. by advertising specifications). If possible, please attach specimen copies of public contracts or technical specifications containing labour clauses.
 - (h) Please supply information concerning any specific provisions of national laws, regulations, collective agreements or arbitration awards relating to the health, safety and welfare of the workers engaged in the execution of public contracts, or, where no such provisions exist, please indicate how it is ensured that the workers concerned enjoy fair and reasonable conditions in such matters.
 - (i) As regards compliance with labour conditions prescribed in public contracts, please explain how it is ensured in national law and practice that workers engaged in the execution of public contracts are kept informed of the conditions of work applicable to them, for instance through the posting of notices in conspicuous places at the establishments and workplaces concerned. Please also indicate whether provision is made for the maintenance of adequate records of the time worked by, and the wages paid to, the workers concerned. Where available, please forward specimen copies of such notices or record forms.
 - (j) Please indicate whether a system of inspection or other similar arrangements are in operation to ensure effective enforcement. Please give information concerning sanctions, such as the withholding of contracts, for failure to observe and apply the provisions of labour clauses in public contracts and also describe any other appropriate measures, such as the withholding of payment under the contract, which would enable the workers concerned to recover unpaid wages.
 - (k) Please give particulars concerning any other aspect of national law and practice which you might consider relevant for the purposes of the present report although not specifically related to points (a)-(j) above.
- (2) Please supply general information on any impact globalization may have had on national law and practice regarding labour clauses in public contracts.
 - (3) If copies of the national laws and regulations, collective agreements or relevant court decisions cited in the present report have not already been supplied to the International Labour Office, please attach the same together with any other available documents concerning the effect given to the provisions of the Convention and the Recommendation. Where appropriate, please provide practical information, for instance up-to-date statistics on the number of public contracts awarded and the number of workers concerned, inspection results, etc.
- II. (1) Please indicate whether any modifications have been made in the national legislation or practice with a view to giving effect to all or some of the provisions of the Convention or of the Recommendation.
- (2) Please state also whether it is intended to adopt measures to give further effect to the provisions of the Convention or of the Recommendation, including ratification.

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- (3) Please state, where appropriate, any difficulties due to the Convention, to the national law or practice, or to any other reason, which may prevent or delay the ratification of the Convention.
 - (4) Please state, where appropriate, if the possible ratification of the Convention has been discussed on a tripartite basis, as provided by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and, if so, when.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.
 - IV. Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

Federal States

- (1) Please indicate whether the provisions of the Convention or of the Recommendation are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action.
- (2) Where federal action is appropriate, please give the information specified in points I, II, III and IV of this form.
- (3) Where action by the constituent units is regarded as appropriate, please supply general information corresponding to points I, II, III and IV of the form. Please indicate also any arrangements it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Convention and of the Recommendation, giving a general indication of any results achieved through such action.