



Governing Body

328th Session, Geneva, 27 October–10 November 2016

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Legal Issues and International Labour Standards Section

LILS

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DRAFT MINUTES

Legal Issues and International Labour Standards Section

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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 members of the Governing Body in relation to the authorities of a State of which they are a national or a representative (GB.328/LILS/1)

1. *The Worker spokesperson* noted that the revised draft resolution in Appendix I to document GB.328/LILS/1 contained significant changes to the draft resolution discussed at the March 2016 session of the Governing Body and greatly reduced the protection granted to Employers' and Workers' delegates to the International Labour Conference (ILC) and members of the Governing Body in relation to the authorities of the States of which they were nationals or representatives. Three proposed privileges and immunities granted to Employers' and Workers' delegates to the Conference and Governing Body members in relation to the authorities of their own States had been removed from the revised proposal. Amendments to Annex I to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies should be guided by the need to ensure effective protection to Employers' and Workers' delegates to the Conference and Governing Body members to freely and independently carry out their function and to be protected against retaliation. The assertion in the document that privileges and immunities were increasingly criticized as unjustified and were too often abused was not an adequate statement to be made in the context of safeguarding tripartism.
2. The human right to freedom of speech was not in itself sufficient to effectively guarantee the free and independent exercise by Employers' and Workers' delegates to the Conference and Governing Body members of the functions within the ILO. That right should be accompanied by protection against arrest or detention, especially during their journey to or from the place of meeting, as they would otherwise not be sufficiently protected against arrest or administrative detention imposed as retaliatory action upon their return. That protection could be circumscribed to the minimum required to protect them in the exercise of their functions, and could in particular exclude cases of flagrante delicto. The draft resolution should ensure that Employer and Worker representatives were not prevented from attending the ILC or the Governing Body, as there were still many instances where that happened. The speaker agreed to the non-inclusion of inviolability for all papers and documents while exercising their functions at the meetings concerned and during journeys to and from the place of meeting. While acknowledging that protection from legal process should cover words spoken or written, and acts performed in official capacities and not words or acts unrelated to ILO matters, she strongly opposed limiting such protection to within the meeting room and noted that such limitation was not in line with the 1970 Conference resolution concerning freedom of speech of non-governmental delegates to ILO meetings. She supported the extension of the immunity to Employers' and Workers' delegates and advisers to ILO Regional Meetings and the proposed revised wording of the preamble. Her group called on governments to accept to restore the immunities that had been removed from the revised draft resolution.

3. *The Employer spokesperson* noted that the revised draft resolution limited itself to the protection of Employers' and Workers' immunity from legal process in respect of words spoken or written, and acts performed in their official capacity. In doing so, it largely replicated the language and scope of protection of the 1970 ILC resolution concerning freedom of speech of non-governmental delegates to ILO meetings. Since that resolution had been unanimously adopted and there still seemed to be agreement on its ongoing relevance, the revised draft resolution covered aspects of the Employers' and Workers' immunity that enjoyed full tripartite recognition and should therefore be broadly acceptable. However, certain elements of Employers' and Workers' immunity contained in the previous draft resolution were no longer included in the revised draft resolution. While she regretted the reduced scope of the proposed immunity, she would nevertheless accept it if it helped to address concerns raised by governments at earlier discussions and if the draft ILC resolution could be submitted for adoption to the Conference in 2017. The Office should use all existing means of action to fill any gaps in protection. It appeared that most aspects of Employers' and Workers' immunity that were no longer covered in the revised draft resolution concerned the free and unhindered movement to or from the place of meeting, in respect of which some protection was available through the Credentials Committees of the Conference and Regional Meetings. Gaps should be closed by amending the relevant provisions in the Standing Orders of the ILC and the *ILO Rules for Regional Meetings*, for example, by including in the *Rules* a provision along the lines of article 26ter(2) of the Standing Orders. In addition, complaints to the Committee on Freedom of Association could be more systematically considered in such cases. She agreed with the point for decision in paragraph 9 of the document.
4. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Panama said that his group had consistently expressed its views on immunities to the Governing Body, and considered the matter to be important. While GRULAC had been extremely cautious on that subject since the constitutions and laws of GRULAC member States had a restrictive approach to privileges and immunities, the obligation for ILO Members to respect the freedom of speech and the independence of Employers' and Workers' Conference delegates and Governing Body members was not in question. However, the proposed extension of the scope of the proposed immunity to include Employers' and Workers' delegates and advisers to ILO Regional Meetings and advisers at the Conference gave his group cause for concern, as it exceeded the scope of both the 1970 ILC resolution and article 40 of the ILO Constitution and therefore had no legal basis. He noted that although the 1947 Convention and Annex I thereto remained valid, they were applicable only to those countries that had acceded thereto.
5. *Speaking on behalf of the Asia and Pacific Group (ASPAG)*, a Government representative of India asked the Office to provide a more detailed proposal concerning the proposed procedures for the waiver of immunity by the ILC or the Governing Body to the Governing Body for discussion at its 329th Session, taking into account the relevant applicable international law. Her group requested additional time for consultations and called for the discussion of the document to be deferred to the 329th Session of the Governing Body in March 2017.
6. *Speaking on behalf of group of industrialized market economy countries (IMEC)*, a Government representative of the United States said that her group supported full protection of freedom of speech of Workers' and Employers' delegates to ILO meetings, as that freedom was central to the human right of freedom of expression. She welcomed the revised proposal, which was more focused and provided immunity from legal process for Workers' and Employers' delegates or advisers for words spoken or written and acts performed in their official capacity at the ILC, the Governing Body and Regional Meetings, including their committees, subcommittees and other bodies, even after the end of their appointment.

7. While she welcomed the fact that most of the changes proposed by IMEC had been incorporated in the draft resolution, she found the Office's answer to the question raised by IMEC in March 2016 with regard to the envisaged criteria and procedure for the waiver to be vague and unsatisfactory. She reiterated IMEC's request for a detailed and substantial description of the procedures envisaged, and proposed that that description should be included in a revised Appendix II for discussion at the 329th Session of the Governing Body. Such procedures needed to be clarified before the draft resolution was forwarded to the ILC. She supported the draft resolution and expressed the view that the new simplified proposal had the potential to obtain the necessary broad support of all groups. She proposed that the draft decision contained in paragraph 9 of the document should be amended to read as follows:

The Governing Body: (a) approves the draft resolution in Appendix I for submission to the next session of the International Labour Conference; and (b) requests the Office to provide the Governing Body, for discussion at its 329th Session, with a revised explanatory Appendix II that contains the detailed envisaged procedures for waiving the immunity by the ILC or the Governing Body.

8. *Speaking on behalf of the Africa group*, a Government representative of Angola reiterated his group's concern, expressed at the 326th Session, with regard to jurisdiction in respect of the grant and waiver of privileges and immunities in cases of differing interpretation as to the distinction between acts in an official capacity and acts in a personal capacity. Authority to confirm or waive the immunity of Employers' and Workers' delegates to the Conference and Governing Body members should not override the jurisdiction of a sovereign country, as that would exceed the 1961 Vienna Convention on Diplomatic Relations and extensive consultation would be required at the national level before any such proposal could be approved. He proposed that the draft decision should include a request for the Office to consult the relevant national institutions on the adoption of such privileges and immunities.
9. *A Government representative of Lesotho* requested additional time for consultations on the draft resolution at the national level.
10. *A representative of the Director-General (Legal Adviser)* said that the document focused on the principle of freedom of speech of Employers' and Workers' delegates and Governing Body members and had been revised to facilitate the debate following the discussions that had taken place at the Governing Body in March 2016. The limitation concerning the words spoken and acts performed at meetings of the bodies concerned and not outside them was in line with the principle of parliamentary privilege, by which the Office's proposals were inspired, whereby parliamentarians were granted immunity from legal process for words spoken or written, votes cast and actions undertaken in direct relation to the official exercise of their duties, often solely on the premises of the national parliament.
11. With regard to GRULAC's comments concerning the proposed extension of the scope to include advisers, he recalled that section 1, subparagraph (v) of the 1947 Convention expressly stated that: "For the purpose 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." In that sense, there was a basis for including advisers in the scope of the protection.
12. In response to IMEC's request with regard to the procedure for examining requests for waiving immunity, he indicated that the Office had prepared a document on the procedure envisaged, which could be circulated. The following procedural steps could, for example, be codified in an annex to the *Compendium of Rules applicable to the Governing Body of the International Labour Office*. Upon receipt of a request for waiver, the Office would prepare the necessary factual and legal information. There would be a filtering or screening mechanism, which in the case of the Governing Body could be entrusted to the Officers of

the Governing Body. Until that point, the case would be treated confidentially. In making a decision on the waiver, the Conference or the Governing Body would have to answer two questions: firstly, did the person concerned enjoy immunity in that case, because he or she was acting in an official capacity as a delegate or Governing Body member and the member State concerned had ratified the 1947 Convention and its revised Annex? Secondly, did the immunity impede the course of justice and could it be waived without prejudice to the purpose for which it was accorded?

13. *The Worker spokesperson* said that she did not support the point for decision because, as it stood, it did not deliver what her group needed. She agreed that immunity should not exceed what was necessary to protect delegates in their work. However, it was also important to ensure that the ILO could function properly as a tripartite Organization; as the only UN Organization that functioned in such a way, the issue was unique to the ILO. Since all three constituents needed additional time to consider the revised draft proposal, she proposed that the Office postpone the discussion until the November 2017 session of the Governing Body.
14. *The Employer spokesperson* said that she supported the proposal to postpone the discussion to November 2017.

Decision

15. ***The Governing Body took note of the revised draft resolution and decided to defer further consideration of this item until its 331st Session (November 2017).***

(GB.328/LILS/1, paragraph 9.)

International Labour Standards and Human Rights Segment

Second item on the agenda

The Standards Initiative: Report of the second meeting of the Standards Review Mechanism Tripartite Working Group

Report of the Officers, in accordance with paragraph 17 of the terms of reference of the Standards Review Mechanism Tripartite Working Group (GB.328/LILS/2/1)

16. *The Worker spokesperson* reported that the Standards Review Mechanism Tripartite Working Group (SRM TWG) had successfully reached a set of consensual recommendations concerning the instruments previously identified as outdated. He highlighted that the ratification rate for ILO Conventions not classified as fundamental or governance Conventions was dangerously low, threatening the credibility of the ILO standard-setting and governance functions. The Office must do more to promote the technical Conventions and member States must redouble ratification efforts. While promotional campaigns regarding the outdated instruments discussed by the SRM TWG would prioritize member States bound by the instruments in question, such campaigns ideally would be directed at all member States. The members of the Workers' group committed to doing their part in

promoting ratification and implementation of instruments as the Office initiated this work in the next 12 months. He reiterated that, in accordance with the SRM TWG's terms of reference, all instruments remained legally valid, including those to be reviewed by the SRM TWG at a future date, until they were reclassified by the Governing Body or withdrawn or abrogated by the Conference. To suggest otherwise would cast a cloud over many ILO instruments. Further, the SRM TWG process did not preclude standard setting on new and emerging issues or on issues unrelated to the instruments already slated for review. In this regard, the SRM TWG urged the Governing Body to address a regulatory gap with regard to apprenticeships and would return to a regulatory gap in relation to shift work when it considered the set of instruments on working time. The immediate abrogation or withdrawal of a number of the outdated instruments were recommended where these instruments were considered to be obsolete, and the SRM TWG would return to the consideration of a larger number of instruments in the context of its later review on the particular subtopics within which they fell. The recommendations were designed to give States time to ratify up-to-date Conventions prior to the abrogation of older instruments, thus avoiding gaps in coverage. The Workers' group expected the SRM TWG's future recommendations to take the same form, following the methodology and format that had developed.

17. *The Employer spokesperson* confirmed the constructive atmosphere in the SRM TWG and that its recommendations were consensually adopted. He said that the Officers' report should contain the main points of view presented by the Employers', Workers' and Government groups during the discussion. The report must provide guidance to governments and the social partners at the national and international levels. The Governing Body might wish to consider allowing time for a consensus to be reached in that regard in the next week. The minutes of future meetings should summarize the discussions preceding the adoption of each individual recommendation, in line with the practice of the Working Party on Policy regarding the Revision of Standards (the Cartier Working Party). The Employers' group would have preferred to see more ambitious decisions taken with regard to the outdated instruments discussed at this meeting. Independently of the recommendations of the SRM TWG, governments played an important role in ensuring that the ILO standards system remained relevant and up to date, including through regular examination of ratified Conventions at the national level. States which continued to have obligations under obsolete Conventions should evaluate the possibility of ratifying more recent instruments, and implementing them in law and in practice, as well as the impact and value added of ratification and implementation with regard to national priorities, taking into account both the protection of workers and the needs of sustainable enterprises. The ILO must assist governments with such evaluations. The Office website should include information on denunciation "windows" for all Conventions, in order to allow governments to choose to denounce instruments should they so wish. Both denunciation and non-ratification of Conventions indicated that Conventions had become irrelevant or were difficult to ratify and implement. The Employers' group would continue to contribute to ensuring that the ILO had a clear, robust and up-to-date body of international standards. He supported the draft decision.
18. *Speaking on behalf of the Government group*, a Government representative of Mexico welcomed the Officers' report that reflected the outcome of the meeting, and supported the recommendations. The review undertaken in the second meeting of the SRM TWG had already resulted in a significant contribution to ensuring that the ILO had a clear, robust and up-to-date body of international labour standards. The participation of technical advisers in the second meeting of the SRM TWG had contributed to a more informed and inclusive discussion. He was confident that through constructive dialogue, collaboration, transparency and practical outcome-focused tripartite decision-making, the SRM TWG could achieve its objective. He supported the draft decision.

19. *Speaking on behalf of GRULAC*, a Government representative of Panama said that, while GRULAC supported the work undertaken by the SRM TWG, the ILC was the only body competent to abrogate or withdraw Conventions. GRULAC understood that, should a Convention be abrogated, then member States would be freed from reporting obligations and the social partners would no longer be able to invoke articles 24 and 26 of the ILO Constitution with regard to the instrument in question. Without prejudice to decisions taken by the Conference on the abrogation of Conventions, in the case of countries which had ratified but not denounced certain ILO Conventions, those instruments remained in force in light of the Vienna Convention on the Law of Treaties. In accordance with articles 42, 55 and 56 of the Vienna Convention, a multilateral treaty did not terminate only because the number of parties had fallen below the number necessary for its entry into force. Consequently, no country could be forced to denounce or ratify Conventions, given that non-denunciation meant that the State in question deemed the instrument to be relevant. He raised the questions of whether denunciation of Conventions was positive for the social partners or for the ILO, and whether abrogation encouraged governments to ratify new instruments. The proposals for Office follow-up to promote up-to-date Conventions were to be welcomed, including the collection of information on reasons for non-ratification of the most recent Conventions. In some cases, countries might not wish to become party to a recent Convention if they already had standards in place that were higher than those contained in the new instrument. GRULAC supported the draft decision.
20. *Speaking on behalf of the Africa group*, a Government representative of Burkina Faso endorsed the statement made on behalf of the Government group, and welcomed the constructive and consensual approach taken by the SRM TWG. He approved the holding of a third meeting in 2017 and supported the draft decision.
21. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Bulgaria said that the EU candidate countries Turkey, Montenegro, Serbia and Albania, and Georgia also aligned themselves with the statement. Together they endorsed the statements by IMEC and the Government group. She noted that the SRM TWG had adopted a two-step approach involving swift Office follow-up followed by a review by the SRM TWG at the time that the set of instruments on the sub-topic were examined. This triggered a positive process with the Office and member States engaging concretely in the SRM TWG's work. Observing that recommendations on outdated Conventions may be of particular consequence for non-metropolitan territories, the group requested the Office to undertake a mapping of the application of such Conventions to non-metropolitan territories and provide technical assistance to member States where necessary. It was suggested that the Office could prepare a proposal for the following session of the Governing Body in relation to the regulatory gap concerning apprenticeships. Emphasizing that its second meeting had well equipped the SRM TWG to make recommendations that contributed to the overall objective of ensuring that the body of standards was clear, robust and up to date, she recalled that international labour standards were fundamental to the EU and its policies. The group supported the draft decision.
22. *Speaking on behalf of ASPAG*, a Government representative of the Republic of Korea endorsed the statement made on behalf of the Government group. He said that it was remarkable that the SRM TWG had completed the review of 63 instruments as scheduled, and stressed that the result of the second meeting was a great achievement that would be a milestone for the ILO's standard-setting activities moving forward. Welcoming the consensus, he noted that Governments had only been apprised of the tentative agreement between Workers and Employers in the morning session of the last day of the meeting. As the responsibility for implementation lay with governments, time to review the details was necessary. Future meetings should be conducted with transparency and in good faith, and with due regard to the need for consensus. Time-bound actions were needed and SRM TWG

work should be carried out in the most efficient and timely manner. ASPAG supported the draft decision.

23. *Speaking on behalf of IMEC*, a Government representative of the United Kingdom said that IMEC endorsed the statement made on behalf of the Government group and acknowledged the ambition inherent in the exercise. The second meeting of the SRM TWG marked the beginning of an ongoing process. She emphasized the critical importance of ensuring a fully tripartite approach to work of the SRM TWG and the development of its recommendations. It was clear that the issue of how to address potential gaps would be likely to continue to figure prominently in the SRM TWG's work. In that regard, pursuant to its terms of reference, she noted that the SRM TWG was charged with identifying gaps in coverage not at the national level but in the body of ILO instruments. The approach in the agreed action plan was a good basis for taking the process forward, allowing time for the Office to collect relevant information and for countries to consider ratification of newer instruments. Due to their highly technical nature, the review of occupational health and safety instruments would require the presence of technical advisers. IMEC did not favour the square-bracketed language in paragraph 4 of the Officers' report and considered that if necessary, it should come back to the SRM TWG. IMEC supported the draft recommendations of the SRM TWG.
24. *Speaking on behalf of the Association of Southeast Asian Nations (ASEAN)*, a Government representative of Cambodia said that ASEAN endorsed the statements made on behalf of the Government group and ASPAG. It also saw a need for technical experts to assist the group and supported the draft decision.
25. *A Government representative of China* endorsed the statements made on behalf of the Government group. Regarding the 40 instruments that will be followed up by the SRM TWG at its later meetings, he expressed concern regarding the effective protection of workers in countries where the standards apply and called upon the ILO to provide technical cooperation to the countries concerned rather than depending only on the ILO supervisory mechanisms. The support of technical experts would be important for the upcoming review of occupational health and safety instruments. Transparency should be enhanced and Government, Worker and Employer members of the SRM TWG should be able to communicate in an equal and candid manner. He supported the draft decision.
26. *A Government representative of India* endorsed the ASPAG statement. She said that the ILO should intensify its efforts to encourage member States to ratify more up-to-date instruments, replacing outdated instruments and progressively increasing the coverage of strategic objectives without creating gaps in protection. Documenting and analysing obstacles to ratification was integral. She supported the draft decision.
27. *The Chairperson of the SRM TWG*, said that the success of the meeting was largely owed to the constructive approach and input of the members of the SRM TWG. He noted the remarks of the members on how to further improve the SRM TWG's working methods and would, prior to the following meeting, ensure that issues such as the timely publication of documents, transparency, and the equal participation of constituents would be taken up.
28. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) confirmed, in response to the comments of the representative of the EU, that the Office would follow-up the application of outdated Conventions to non-metropolitan territories and provide technical assistance to member States affected. The Office would report in this regard to the SRM TWG.

Decision

29. *The Governing Body took note of the report of the Officers concerning the second meeting of the SRM TWG and, in approving its recommendations:*

- (a) *welcomed the SRM TWG's efforts to integrate its recommendations into the broader programme of work of the ILO on standards policy;*
- (b) *revised the SRM TWG's initial programme of work to include the Labour Statistics Convention, 1985 (No. 160), the Occupational Health Services Convention, 1985 (No. 161), the Labour Statistics Recommendation, 1985 (No. 170), and the Occupational Health Services Recommendation, 1985 (No. 171), so that the SRM TWG's initial programme of work now reviews a total of 235 international labour standards organized into 20 thematic sets of instruments grouped by strategic objective;*
- (c) *noted the SRM TWG's recommendations concerning the abrogation of the Inspection of Emigrants Convention, 1926 (No. 21), the Recruiting of Indigenous Workers Convention, 1936 (No. 50), the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65), the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86), and the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104), and the withdrawal of the Hours of Work (Fishing) Recommendation, 1920 (No. 7), the Migration for Employment Recommendation, 1939 (No. 61), and the Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62), in relation to which it would consider placing an item on the agenda of the 107th Session (2018) of the International Labour Conference (see GB.328/INS/3(Add.));*
- (d) *noted that the SRM TWG will follow up at later meetings on the 40 outdated Conventions and Recommendations listed in its Officers' report, on the terms set out in that report (the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), the Night Work (Bakeries) Convention, 1925 (No. 20), the Sickness Insurance (Industry) Convention, 1927 (No. 24), the Sickness Insurance (Agriculture) Convention, 1927 (No. 25), the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), the Fee-Charging Employment Agencies Convention, 1933 (No. 34), the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), the Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39), the Survivors' Insurance (Agriculture) Convention, 1933 (No. 40), the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), the Sheet-Glass Works Convention, 1934 (No. 43), the Unemployment Provision Convention, 1934 (No. 44), the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), the Reduction of Hours of Work (Glass-Bottle Works) Convention,*

1935 (No. 49), the Holidays with Pay Convention, 1936 (No. 52), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), the Safety Provisions (Building) Convention, 1937 (No. 62), the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), the Maternity Protection Convention (Revised), 1952 (No. 103), the Indigenous and Tribal Populations Convention, 1957 (No. 107), the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Minimum Age (Underground Work) Convention, 1965 (No. 123), the Workmen's Compensation (Minimum Scale) Recommendation, 1925 (No. 22), the Workmen's Compensation (Jurisdiction) Recommendation, 1925 (No. 23), the Workmen's Compensation (Occupational Diseases) Recommendation, 1925 (No. 24), the Sickness Insurance Recommendation, 1927 (No. 29), the Protection against Accidents (Dockers) Reciprocity Recommendation, 1932 (No. 40), the Unemployment Provision Recommendation, 1934 (No. 44), the Holidays with Pay Recommendation, 1936 (No. 47), the Holidays with Pay (Agriculture) Recommendation, 1952 (No. 93), the Maternity Protection Recommendation, 1952 (No. 95), and the Minimum Age (Underground Work) Recommendation, 1965 (No. 124)), and would also follow up itself the regulatory gap identified with regard to the topic of shift work in its later discussion, at a date to be decided, on the working-time instruments;

- (e) invited the Office to take the necessary steps immediately in regard to the juridical replacement of the Safety Provisions (Building) Recommendation, 1937 (No. 53), the Co-operation in Accident Prevention (Building) Recommendation, 1937 (No. 55), the Vocational Training Recommendation, 1939 (No. 57), the Apprenticeship Recommendation, 1939 (No. 60), the Vocational Guidance Recommendation, 1949 (No. 87), the Vocational Training (Adults) Recommendation, 1950 (No. 88), the Vocational Training (Agriculture) Recommendation, 1956 (No. 101), the Occupational Health Services Recommendation, 1959 (No. 112), the Vocational Training Recommendation, 1962 (No. 117), the Termination of Employment Recommendation, 1963 (No. 119), the Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123), the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127), the Human Resources Development Recommendation, 1975 (No. 150), and the Work in Fishing Recommendation, 2005 (No. 196);
- (f) requested the Office to commence strategic follow-up within 12 months in relation to the 30 outdated Conventions listed in the SRM TWG Officers' report, on the terms set out in that report, and decided that the costs of this follow-up would be met through existing resources;
- (g) requested the Office to take the necessary steps to ensure the integration of the follow-up as appropriate in the programme of work to implement the 2016 resolution on Advancing Social Justice through Decent Work to be examined at the 329th Session (March 2017) of the Governing Body and in the Programme and Budget proposals for 2018–19;
- (h) requested the Office to prepare a proposal for a possible standard-setting item on apprenticeships, recognizing the regulatory gap identified in this regard, for consideration at its 329th Session (March 2017) for inclusion in a future

agenda of the International Labour Conference in accordance with the strategic and coherent approach;

- (i) decided that the SRM TWG would examine the instruments concerning occupational safety and health (general provisions and specific risks), within set of instruments 6 of the revised initial programme of work, in its third meeting;*
- (j) convened the third meeting of the SRM TWG from 25 to 29 September 2017.*

(GB.328/LILS/2/1, paragraph 5.)

**Follow-up to the joint report of the Chairpersons
of the Committee of Experts on the Application
of Conventions and Recommendations and
the Committee on Freedom of Association**
(GB.328/LILS/2/2)

- 30. *The Worker spokesperson* said that the group supported the proposal to consult the different groups in order to prepare the discussion at the 329th Session (March 2017) of the Governing Body. It supported the draft decision.
- 31. *The Employer spokesperson* said that the Employers were of the view that outstanding issues relating to the supervisory system should be addressed in a workshop. He placed emphasis on the principles and objectives previously raised by his group, namely to: streamline, simplify and consolidate existing procedures, including to remove any overlap and duplication; enhance user-friendliness; strengthen tripartite governance and ownership; ensure that individual supervisory procedures have distinct profiles, with different legal bases as regards their terms of reference and, on this basis, render them complementary to each other. As that would require broad support from the three groups, the Employers supported the Office's proposal for the consultation process and the timeline leading to a decision at the 329th Session (March 2017) of the Governing Body. It supported the draft decision.
- 32. *Speaking on behalf of the Government group*, a Government representative of Mexico said that the time had come to face the challenge of improving the supervisory system, by profiting from the acquired knowledge of almost 100 years of history towards maintaining its relevance for the upcoming century. The group considered that it was necessary to start the process to strengthen the supervisory system and make it more effective and coherent on the basis of meaningful consultations towards clear objectives. A coherent and cross-cutting understanding of each mechanism and an assessment of the gaps and/or challenges to transparency, governance, tripartism and coherence were of the utmost importance for the effective functioning of the supervisory system. The consultation process should lead to concrete proposals addressing the system as a whole, while bearing in mind the existing initiatives such as the Standards Review Mechanism, the informal tripartite consultations on the working methods of the Committee on the Application of Standards and the recently established subcommittee of the Committee on Freedom of Association. On the other hand, the consultation process should seek to clarify mandates and articulate the procedures of supervisory bodies, as well as admissibility criteria; to improve communication between these bodies and governments; and to encourage the use of more transparent, clear and comprehensive language. The Office paper to be prepared for the consultations should be informed by government inputs from the 2015 tripartite consultative process in relation to the joint report and from the views expressed at the 326th Session (March 2016) of the Governing Body. The Office paper should also include the constituents' comments in an annex.

33. *Speaking on behalf of GRULAC*, a Government representative of Panama said that the group aligned itself with the statement made on behalf of the Government group. The period between January and February 2017 provided an opportunity to determine on a tripartite basis the parameters for the process concerning the strengthening of the supervisory system before any substantive discussion took place. A transparent, organized and effective consultation process would be ensured through clarity on the agenda, the main topics to be addressed, deadlines, the modalities and the format for the consultations. In particular, the process should determine a holistic agenda addressing the supervisory system as a whole and coherence with existing initiatives. The consultation process should seek improvements to the level of clarity in relation to the mandates of supervisory bodies, the admissibility criteria, an improved dialogue between the supervisory bodies and governments, the use of clearer and more transparent language, the promotion of national dispute settlement mechanisms and the grouping of subjects for the submission of reports. In this respect, the written comments presented in particular by GRULAC during the preparation of the joint report presented a number of suggestions. These comments should be published for the sake of transparency. GRULAC supported the draft decision.
34. *Speaking on behalf of the Africa group*, a Government representative of Burkina Faso said that the group endorsed the statement made on behalf of the Government group. The group noted that consultations would be pursued in order to reach an indispensable consensus on an effective and efficient functioning of the supervisory system. He supported the draft decision.
35. *Speaking on behalf of IMEC*, a Government representative of the United States said that IMEC endorsed the statement made on behalf of the Government group. She recalled that IMEC had delivered a detailed statement at the 326th Session (March 2016) of the Governing Body, which the Office was requested to consider when preparing the proposed paper for consultations, indicating for example the group's interest in reducing reporting burdens and enhancing the functioning of the supervisory system. The issues that merited further consideration included the functioning and interrelationship between the various supervisory mechanisms and procedures, including the Committee on Freedom of Association; the effects of overlapping or parallel processes; a better articulation and explanation of article 24 and Committee on Freedom of Association procedures; the improvement of Standing Orders and the codification of established practice in Standing Orders; transparency on receivability criteria; delays in procedures; better prioritizing the consideration of alleged breaches; and interim measures in urgent situations. The group emphasized its continuing strong support for, and confidence in, the ILO supervisory machinery as well as changes to strengthen the system. IMEC supported the Office's proposed way forward and expected the upcoming consultations to be substantive and fully inclusive. The Office should allow for sufficient time for all interested governments to weigh in from capitals. IMEC supported the draft decision.
36. *A Government representative of Colombia* recognized the importance of strengthening the ILO supervisory system, to guarantee greater clarity, transparency, efficiency and effectiveness. The system had evolved to adapt to changing social realities and challenges. Its functioning hinged on the interaction between the different parties involved as well as of the different supervisory bodies. It was nonetheless necessary to identify ways to simplify and streamline the supervisory system to protect workers' and employers' rights and to guarantee coherence and transparency. The consultations referred to in the document and the strengthening of the system with the active participation of the constituents were key in this respect. It should be possible to analyse the simplification of overly complex processes and the impact of duplication in order to guarantee efficient processes and to satisfy constituents' interests and address their concerns. The consultations should take into account the heavy workload of the supervisory bodies, the limited number of experts and the limited amount of time available to resolve issues. In order to ease the burden on the ILO and

improve its effectiveness and to strengthen internal mechanisms and social dialogue, domestic remedies should be exhausted before any other action was taken. Where that was not possible, timely support should be provided to ensure that the ILO had the necessary tools to respond to requests. His Government supported the draft decision.

37. *A Government representative of Spain*, also speaking on behalf of the Governments of Argentina, Italy, Portugal and Switzerland, said that the process to strengthen the supervisory system should involve a clear and ambitious roadmap, which may be flexible in terms of deadlines but not in terms of content. The roadmap should focus on the common principles underpinning the supervisory machinery, with a view to developing specific measures to ensure greater coherence and a holistic understanding of the scope and purpose of each mechanism, their specific features as well as the synergies and compatibilities between them.
38. The Office should organize informal consultations in January 2017 to guide the preparation of the document and to plan further consultations in February, so that a relevant consensus document could be submitted in March. Reaching an initial agreement on guiding principles and those relating to the system as a whole would make significant progress possible. These principles could be summarized as follows.
39. First, with regard to transparency, all supervisory bodies should use more accessible language and admissibility criteria should be based on the universal right to access the supervisory bodies, in order to increase legal certainty and strengthen the constituents' confidence. The subcommittee established by the Committee on Freedom of Association had yielded satisfactory results concerning serious and urgent cases and should be examined at the March 2017 session of the Governing Body. Access to labour dispute settlement bodies should be extended, with independent judicial supervision of workers' and employers' rights. In connection with governance, the dialogue between supervisory bodies and governments should be institutionalized. In respect of tripartism, as the Government group's diversity made finding common positions difficult, it was important that the composition of the supervisory bodies should respect the 1:2:1 ratio (Workers, Governments and Employers). As regards coherence, a general overview of the work of other supervisory bodies should be presented to the Committee on the Application of Standards, and procedural rules should address complaints lodged under article 26. He supported the draft decision.
40. *A Government representative of France* said that although the different ILO supervisory bodies were currently fulfilling their mandates effectively, matters relating to the interpretation of labour standards continued to be debated by the constituents and no legitimate tool was available to resolve conflicting interpretations. The changes proposed by her Government in this respect would serve to strengthen the supervisory system and make it more effective and legitimate. Maintaining the status quo might offer peace of mind for the time being but could eventually weaken the ILO's standard-setting function.
41. *The representative of the Director-General* (Director, NORMES) said that the Office would ensure that the preparatory document for the consultation faithfully reflected the tripartite constituents' views and proposals. The development of innovative, ambitious and concrete proposals on the supervisory system, as requested by Governing Body members, was a complex and time-consuming process, which was why the timeframe specified in the document had been proposed. The Office was fully aware of its responsibility to facilitate an inclusive and transparent tripartite dialogue on strengthening the supervisory system and would ensure that it met the expectations of the constituents in that regard.

Decision

- 42. *The Governing Body requested the Director-General to prepare and organize consultations on the further strengthening of the supervisory system and, on this basis, to submit specific recommendations for its consideration at its 329th Session (March 2017).***

(GB.328/LILS/2/2, paragraph 6.)

Third item on the agenda

Proposed form for reports to be requested under article 19 of the Constitution in 2018 on the Social Protection Floors Recommendation, 2012 (No. 202) (GB.328/LILS/3(Rev.))

- 43. *The Worker spokesperson*** said that the length of the questionnaire was necessary to cover all relevant elements of Recommendation No. 202, noting that it only addressed one instrument. The questionnaire could provide useful information on the current level of protection and create a baseline for the assessment of future progress towards universal social protection coverage, which would be most timely and justified since the ILO was responsible for Sustainable Development Goal target 1.3 on nationally appropriate social protection systems for all, including social protection floors. Her group supported the draft decision and encouraged workers' organizations to reply to the questionnaire. The Office should make the necessary resources available so that the information collected could be processed and published in a timely and user-friendly manner.
- 44. *The Employer spokesperson*** said that, pursuant to article 19 of the ILO Constitution, report forms should faithfully reflect the content of the instrument that they addressed. In that particular case, the Employers had submitted a list of proposed editorial amendments to the Office in order to reflect the fact that the instrument under review was of a non-binding nature and hoped that their suggestions could be taken into account. He expressed support for the draft decision, provided that the Government and the Workers' groups accepted the proposed editorial changes.
- 45. *Speaking on behalf of the Africa group***, a Government representative of Botswana recalled that Recommendation No. 202 had been adopted to guide member States on the establishment of national social protection floors as part of comprehensive social security systems. Her group was confident that the Office had taken the concerns it had expressed regarding the length and complexity of questionnaires into account and that technical assistance from regional and subregional offices would be provided to member States to help them complete the questionnaire.
- 46. *Speaking on behalf of GRULAC***, a Government representative of Panama said that each country and international agency had its own definition of "social protection" and "social security" and that various schemes, with different scopes of application, existed in different countries. In some member States, for example, the term "social security" referred to a range of contributory schemes such as medical care and unemployment benefits, while in others it designated only pensions. Furthermore, in the report form the terms "social protection" and "social security" were used interchangeably and the term "social assistance" had not been defined, which meant that each country could interpret those terms according to its own

circumstances. Therefore, the Office should set out more detailed definitions and guidelines in the introductory part of the questionnaire. His group supported the draft decision, provided that the Office took into account its concerns.

47. *Speaking on behalf of IMEC*, a Government representative of Canada recognized that the questionnaire allowed for an integrated and cross-cutting approach aimed at encompassing all of the major challenges connected with its implementation. The length and detail of the questionnaire were cause for concern; the key questions should focus on the implementation of and follow-up to Recommendation No. 202. More general information could offer interesting insights and background for the discussion at the ILC in 2017. While it would be difficult to amend the proposed questionnaire, the Office should learn from past experience and consult with member States when drafting future questionnaires. Her group asked whether further consultations could be held in the margins of the current Governing Body, prior to the adoption of the questionnaire. The Office should consolidate its efforts to avoid the duplication of recent and future reporting requirements on the same subjects, in order to reduce the burden on member States. It should also take into consideration the challenges related to the gathering of information, which for many IMEC countries could involve consultations with different ministries and agencies and, in some cases, various levels of government.
48. *The representative of the Director-General* (Director, NORMES) said that consultations had been held on the current questionnaire, in line with standard practice. However, due to the heavy agenda of the current session of the Governing Body, the Office had not been able to engage with all constituents as fully as it had done in the past. Nevertheless, it had consulted with Governments, Workers and Employers and would take the proposed editorial amendments into account when finalizing the document. With regard to duplication, the Office was aware that the questionnaires created a workload for ministers. It also recognized that the current questionnaire was longer than previous ones, which was due to the detailed nature of Recommendation No. 202. The Office had taken care to ensure that the questionnaires on social security statistics had not been duplicated, which explained why the questions were different. While Recommendation No. 202 used the terms “social security” and “social protection” interchangeably, the Office was prepared to add clarifications to the questionnaire.
49. *The Worker spokesperson* said that since Recommendation No. 202 was wide in scope because it sought to cover all relevant issues on social protection floors, it would be inadvisable to curtail the scope of the questionnaire. It was important to obtain the desired information in order to assess the effect given to the Recommendation and determine any further action. If the amendments requested by the Employers went beyond editorial changes, further consultations would need to be held.
50. *The Employer spokesperson* said that, in light of the Office’s reassurances regarding the proposed editorial changes, his group endorsed the draft decision.
51. *A Government representative of Mexico* said that he would support the draft decision, provided that the Office clarified the terms “social protection” and “social security” as requested by GRULAC.
52. *The representative of the Director-General* suggested that the adoption of the draft decision should be postponed until the final version of the questionnaire with the proposed editorial changes was made available the following week.
53. The Governing Body decided to postpone the adoption of the draft decision until a later sitting to allow for further consultations on a revised report form taking into account the points raised during the discussion. At a later sitting, it adopted a revised report form.

Decision**54. The Governing Body:**

- (a) requested governments to submit reports for 2018, under article 19 of the Constitution, on the Social Protection Floors Recommendation, 2012 (No. 202);*
- (b) approved the report form concerning this instrument contained in the appendix to document GB.328/LILS/3(Rev.).*

(GB.328/LILS/3(Rev.), paragraph 11.)

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