

THIRD MEETING OF THE SRM TRIPARTITE WORKING GROUP

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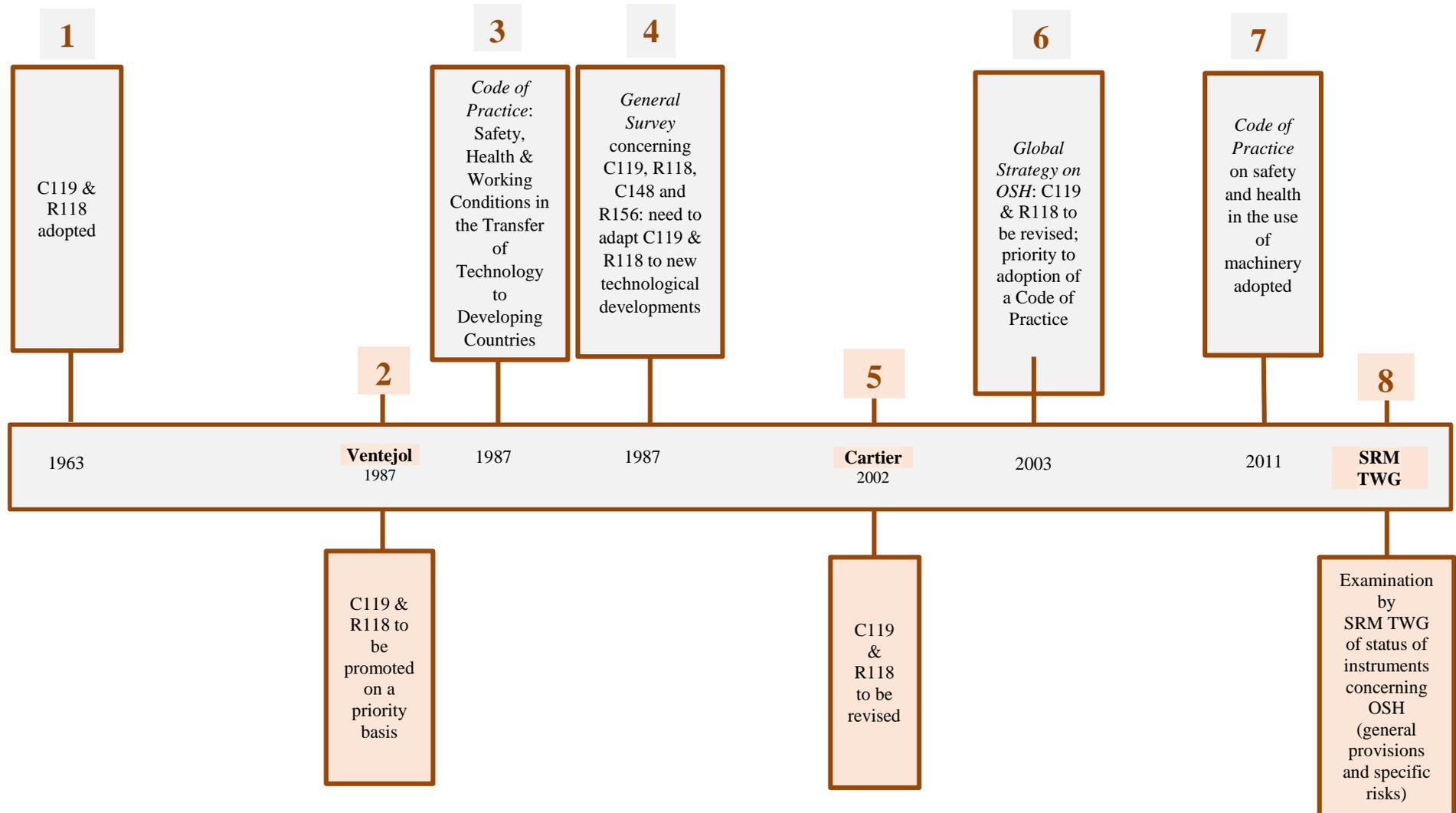
EXAMINATION OF INSTRUMENTS CONCERNING OCCUPATIONAL SAFETY AND HEALTH (GENERAL PROVISIONS AND SPECIFIC RISKS)

Technical Note 7: Instruments concerning the guarding of machinery

- The sub-topic of *guarding of machinery* falls within the category of instruments dealing with 'specific risks'.
- The sub-topic of guarding of machinery includes: the **Guarding of Machinery Convention, 1963 (No. 119)** and the **Guarding of Machinery Recommendation, 1963 (No. 118)**
- *Current status of instruments*: to be revised (upon recommendation of Cartier Working Party)
- *Possible action to be considered*: classification as *instruments requiring further action*; consideration within any revision process on OSH

18 August 2017

ILO regulation of guarding of machinery: Chronology of developments



ILO regulatory approach to the guarding of machinery

The **Guarding of Machinery Convention, 1963 (No. 119)** and the **Guarding of Machinery Recommendation, 1963 (No. 118)** aim to protect workers from hazards related to machinery. These instruments deal with a single specific hazard, within the category of instruments dealing with specific risks.

At the time that Convention No. 119 and Recommendation No. 118 were adopted, the accepted regulatory approach was for a focus on industrial safety and the prescription of precise rules. This approach in dealing with hazards has changed in more recent OSH instruments, which are policy-based and focus on safety and health at the workplace level and the assessment of risks, setting out the responsibilities of employers, workers and their representatives in this respect.

Chronology: Convention No. 119 and Recommendation No. 118 at a glance

1. 1963: ILC adopted Convention No. 119 and Recommendation No. 118

The purpose of Convention No. 119 and Recommendation No. 118 is to prevent hazards arising out of moving parts of machinery. Measures to achieve this purpose include the prohibition of the sale or hire of dangerous parts of machines without guards (responsibility of vendors, the persons letting out on hire, or their agents) and the provision of adequate training and instructions to persons who have to use or service machines (responsibility of employers). While it was considered premature to address questions concerning the safety of machinery in international transfer, Recommendation No. 118 provides that exporting and importing member States should enter into bilateral or multilateral arrangements with the objective of achieving greater uniformity in safety standards for machinery, and consequently eliminating certain difficulties in their trade.¹

See: [Guarding of Machinery Convention, 1963 \(No. 119\)](#)
[Guarding of Machinery Recommendation, 1963 \(No. 118\)](#);
[ILO: Prohibition of the Sale, Hire and Use of Inadequately Guarded Machinery, Report VI\(1\), ILC, 46th Session, Geneva, 1962, p.12](#)

2. 1987: Governing Body decided that Convention No. 119 and Recommendation No. 118 should be promoted on a priority basis

The Governing Body, upon the recommendation of the Ventejol Working Party, decided that Convention No. 119 and Recommendation No. 118 should be promoted on a priority basis.²

¹ Note that the Power-driven Machinery Recommendation, 1929 (No. 32) was subsequently withdrawn by the Conference as it was considered to have lost its relevance following the adoption of the more extensive Convention No. 119 and Recommendation No. 118: see [GB.283/2/2 \(2002\)](#).

² The Ventejol Working Parties classified instruments into four categories: (1) existing instruments, the ratification and application of which should be promoted on a priority basis; (2) existing instruments, the revision of which should be appropriate; (3) other existing instruments; and (4) subjects for which the formulation of new instruments should be considered.

See: [GB.194/PFA/12/5](#), Appendix I, p. 69 (recommendations of the first Working Party, 1974); [GB.235/WP/ILS/1](#), Appendix II (revised classification proposed by the second Working Party, 1987); and [GB.236/3/2](#), para. 13 (approval of the Governing Body, 1987)

3. 1987: Code of Practice on Safety, health and working conditions in the transfer of technology to developing countries adopted

Concluding that safety and health standards should be transferred along with technologies, a meeting of experts adopted the Code of Practice. The guidance provided in the Code includes, for example, the analysis of existing technologies with a view to modifying them where necessary to remove hazards; and the setting up of administrative, legal and educational frameworks or the implementation of preventive and remedial measures.

See: [Code of practice on safety, health and working conditions in the transfer of technology to developing countries; GB.234/7/8](#) (Report of the meeting of experts, Nov. 1986)

4. 1987: ILC discussed General Survey concerning safety in the working environment

The 1987 General Survey on safety in the working environment concerned Convention No. 119 and Recommendation No. 118, as well as the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) and its accompanying Recommendation. The Committee of Experts observed that a number of member States faced technical difficulties in implementing specific provisions of the Convention, notably concerning the effect given in law and the monitoring in practice of the responsibilities relating to the sale, hire, transfer, exhibition, design and manufacture in Part II of the Convention. It also noted persistent problems concerning the import of unguarded machinery into developing countries, particularly in the absence of supervision mechanisms in importing countries. In its final conclusions, the Committee of Experts indicated that Convention No. 119 retained its full value as a guide for national action.

See: [ILO: General Survey on Safety in the Working Environment, Geneva, 1987](#), paras. 71, 655 and 676; [ILO: Record of Proceedings, No. 24, ILC, 73rd Session, Geneva, 1987](#), p.24/12, para. 61.

5. 2002: Governing Body classified Convention No. 119 and Recommendation No. 118 as instruments to be revised

The Governing Body decided, upon the recommendation of the Cartier Working Party, that Convention No. 119 and Recommendation No. 118 should be revised to adapt to new concepts in the area of OSH and to technical developments in machinery. It was decided that the revision of the two instruments would be examined by the Conference in 2003 within the general

discussion concerning an integrated approach to ILO standards-related activities in the area of OSH.³

See: [GB.283/LILS/WP/PRS/1/2](#) (Office background paper, March 2002) paras. 7, 43 and 50, Appendix II, Table 1
[GB.277/LILS/WP/PRS/4](#) (Office background paper, March 2000) pp. 8-9, I.11 and I.12;
[GB.271/LILS/WP/PRS/2](#), (Discussion by the LILS Committee, March 1998) paras. 120-129,
[GB.270/LILS/WP/PRS/1/2](#) (Follow-up to the recommendations of the Working Party, Nov. 1997), paras. 119-127;
[GB.268/LILS/WP/PRS/1](#) (Office background paper, March 1997), VIII.4

6. 2003: ILC adopted Global Strategy on OSH: Convention No. 119 and Recommendation No. 118 to be revised

At its 91st Session (2003), the ILC considered the implementation of an integrated approach to ILO standards-related activities in the area of OSH. The resulting Global Strategy on OSH included priorities for revising existing, and developing new, instruments. In particular, it called for the revision of Convention No. 119 and Recommendation No. 118 in order to take into account technical difficulties in the application of the instruments, the latest developments in technology and the need to provide safety and health-related information and training in the transfer of technology. It concluded that priority should be given to the revision of Convention No. 119 and Recommendation No. 118 as well as to the development of a code of practice on the guarding of machinery.⁴

See: [2003 Global strategy on Occupational Safety and Health](#)
ILO standards-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the elaboration of a plan of action for such activities,
[Report VI: ILC, 91st Session, 2003, Geneva](#), paras. 169 and 170

7. 2011: Adoption of Code of practice on safety and health in the use of machinery

A 2011 meeting of experts adopted the Code of Practice on safety and health in the use of machinery. The Code sets new benchmarks and addresses both health (lighting, dust, noise, ergonomics, etc.) and technological aspects in the safe use of machinery. The Code provides for the responsibilities of competent authorities, as well as the rights and responsibilities of employers and workers, and provides guidance to designers, manufacturers and suppliers of machinery. In addition to safety and health measures at the workplace, it promotes the control of safety and health in the use of machinery throughout the life cycle of machines - from the design and manufacturing stage to the decommissioning of machinery, and provides for the communication of safety and health information through the supply chain.

See: [Code of Practice on safety and health in the use of machinery](#)
[MEUM/2011/7](#) (Final report of the Meeting of Experts, Nov-Dec. 2011)

³ Responding to a survey on the withdrawal of a number of recommendations, 62 of 63 replies received from governments supported the withdrawal of the Power-driven Machinery Recommendation, 1929 (No. 32), which was subsequently withdrawn by the International Labour Conference.

⁴ Two priorities for revision were identified. The second priority was revision of the instruments concerning chemicals by a Protocol to the Chemicals Convention, 1990 (No. 170): see *technical note 4*.

The instruments in 2017: developments since the instruments were adopted

A Policy context: Technological and safety approach developments since the instruments were adopted

The subject of the guarding of machinery is very complex, owing to the many kinds of machines and the extreme variety of conditions under which they are used. The early instruments were principally aimed at protecting workers from machinery-induced accidents by using safety technologies, including advanced guarding systems or safe feeding devices. Although these technological measures continue to be important and valid, comprehensive approaches to promote safety and health in the use of machinery are now emphasized. The ILO Code of Practice provides for a number of examples in this regard, including holistic risk assessments. Another important evolution is the full participation of workers in the promotion of safety and health in the use of machinery. This includes, for example, workers' rights to participate in the application and review of relevant OSH measures and to be consulted, informed and trained on all relevant aspects of machinery use including emergency procedures.

B International labour standards context

(1) Information relating to the ratification of Convention No. 119

Convention No. 119 is a well-ratified instrument, in relation to which no denunciations have been made. Since the classification of Convention No. 119 as “to be revised” following the recommendation of the Cartier Working Party in 2002, there have been three additional ratifications.

Convention	Effective ratifications:	Further information
Convention No.119	52 effective ratifications (0 denunciations)	<ul style="list-style-type: none"> • <u>Last ratification</u>: 2008 (<i>Luxembourg</i>) • <u>Ratification by dates</u>: 1963-1973: 29 ratifications; 1974-1993: 19 ratifications; 2000-2008: 4 ratifications • <u>Ratification by region</u>: Africa: 11 ratifications;⁵ Americas: 8 ratifications;⁶ Arab States: 4 ratifications;⁷ Asia and the Pacific: 2 ratifications;⁸ Europe and Central Asia: 25 ratifications.⁹

⁵ *Algeria, Central African Republic, Congo, Democratic Republic of the Congo, Ghana, Guinea, Madagascar, Morocco, Niger, Sierra Leone and Tunisia.*

⁶ *Brazil, Dominican Republic, Ecuador, Guatemala, Nicaragua, Panama, Paraguay, and Uruguay.*

⁷ *Japan and Malaysia.*

⁸ *China and Republic of Korea.*

⁹ *Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Italy, Kyrgyzstan, Latvia, Luxembourg, Malta, Moldova, Montenegro, Norway, Poland, Russian Federation, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Tajikistan, Turkey, and Ukraine.*

(2) Information concerning the application of Convention No. 119

There are currently 37 pending comments by the Committee of Experts concerning the application of the Convention in ratifying member States. The major recurrent themes concerning the application of Convention No. 119 include:

- Requirement to specify the machinery or parts thereof considered to be dangerous (*Article 2(3)*);¹⁰
- The effect given to and the control of compliance with the prohibition to sale/hire/transfer/exhibit dangerous parts of machinery without appropriate guards in *Article 2* of the persons listed in *Article 4* (the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor, the respective agents and the manufacturer), in parallel to the responsibilities of employers;¹¹
- Obligation of employers to inform and instruct workers (*Article 10*) and prohibition of workers using dangerous parts of machinery without appropriate guards (*Article 11*);¹²
- Enforcement activities, including adequate inspection to ensure compliance (*Article 15*);¹³
- Coverage of all branches of economic economy (*Article 17*).¹⁴

There have been no representations made under article 24 of the Constitution in relation to Convention No. 119.

The Conference Committee on the Application of Standards has considered the application of the Convention in relation to *Sierra Leone* (concerning the lack of effect given in the national legislation to Part II of the Convention concerning the guarding of machinery and the prohibition of using unprotected machines),¹⁵ the *Central African Republic* (absence of definition in the national legislation of dangerous parts and dangerous machinery and insufficiency of inspections concerning the guarding of machinery),¹⁶ *Ghana* (extending the regulations on the guarding of machinery to agriculture, forestry, road and rail transport, and shipping)¹⁷ and the *Democratic Republic of the Congo* (effect given in the national legislation

¹⁰ Algeria, observation published in 2017

¹¹ See, for example, *Central African Republic*, observation published in 1998 (repeated every year since then); *Ecuador*, direct request published in 2016; *Jordan*, observation published in 2016; *Kuwait*, direct request published in 2016; *Madagascar*, observation published in 2016; *Paraguay*, direct request published in 2015.

¹² See, for example, *Central African Republic*, observation published in 1998 (repeated every year since then); *Guinea*, direct request published in 2016; *Niger*, direct request published in 2016.

¹³ See, for example, *Madagascar*, observation published in 2016; *Turkey*, direct request published in 2016.

¹⁴ See, for example, *Ghana*, observation published in 2016, *Sierra Leone*, observation published in 1998 (repeated every year since then).

¹⁵ Individual case concerning the application of Convention No. 119 by Sierra Leone, last discussed at the ILC, 75th Session, 1988.

¹⁶ Individual case concerning the application of Convention No. 119 by the Central African Republic, last discussed at the 80th Session of the ILC in 1993.

¹⁷ Individual case concerning the application of Convention No. 119 by Ghana, ILC, 77th Session, 1990.

to *Articles 2 to 4* of the Convention concerning the prohibition of the sale, hire, exhibition or transfer of machinery without appropriate guards).¹⁸

Key considerations in determining the status of Convention No. 119 and Recommendation No. 118

In examining Convention No. 119 and Recommendation No. 118 for the purposes of determining their status, the following considerations are particularly relevant:

- Convention No. 119 is well ratified, although the rate of new ratifications has slowed in recent years.
- In 2002, Convention No. 119 and Recommendation No. 118 were considered by the Cartier Working Party to be in need of revision, which was subsequently confirmed in the 2003 Global Strategy on OSH. Follow-up to the conclusions of the 2003 Global Strategy on OSH was taken in 2011 insofar as the adoption of a Code of practice on Safety and health in the use of machinery is concerned. No follow-up has been taken in relation to the proposed revision of Convention No. 119.
- The instruments were adopted at a time that a different regulatory approach existed in relation to OSH. The more modern OSH instruments provide for a national policy on the subject matter they regulate and take a management approach to OSH, recognising the role of employers and workers to manage OSH at the workplace level.¹⁹
- Developing countries appear to continue to face problems in the importation of second-hand machinery.²⁰ Convention No. 119 does not address the question of safety in the international transfer of machinery and technology.²¹ In contrast, the 2011 Code of Practice, for example, addresses questions relating to import and export (e.g. the provision of safety information through the supply chain) and more recent instruments²² oblige exporting states to fulfil certain requirements in the export of goods.
- In the context of the 1987 General Survey on safety in the working environment, member States considered that the provisions on how to prevent dangerous machinery from reaching users (Part II of Convention No. 119) were too complex to be effectively

¹⁸ Individual case concerning the application of Convention No. 119 by the *Democratic Republic of the Congo*, ILC, 96th Session, 2007. See also *Democratic Republic of the Congo*, observation published in 2006.

¹⁹ [ILO: ILO standards-related activities in the area of occupational safety and health , Report VI, International Labour Conference, 91st Session, Geneva, 2003](#), para. 47. See for example, the Occupational Safety and Health Convention, 1981 (No. 155), the Chemicals Convention, 1990 (No. 170), the Prevention of Major Industrial Accidents Convention, 1993 (No. 174) and the Safety and Health in Mines Convention, 1995 (No. 176)

²⁰ [ILO: Conventions in need of revision \(third stage\), Committee on Legal Issues and International Labour Standards, Governing Body, 268th Session, Geneva, Mar. 1997, GB.268/LILS/WP/PRS/1](#), section VIII.4; [ILO: Follow-up on consultations concerning the need for revision and obstacles to the ratification of 13 Conventions, Committee on Legal Issues and International Labour Standards, Governing Body, 271st Session, Geneva, Mar. 1998, GB.271/LILS/WP/PRS/2](#), paras. 120-129.

²¹ *Ibid.*

²² For example, the Chemicals Convention, 1990 (No. 170) (see *Technical note 4*) and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174) (see *Technical note 6*).

implemented.²³ It appears that these difficulties particularly relate to the State monitoring of the respective responsibilities of designers, manufacturers and suppliers, vendors, the persons letting out on hire, or their agents, which at national level are often the responsibility of government entities other than labour inspectorates. The instruments do not require coordination mechanisms at the national level between labour inspectorates and entities responsible for monitoring the responsibilities of manufacturers and other persons involved in transmitting machines to users. Some guidance is provided in the 2011 Code of Practice on Safety and health in the use of machinery.

Possible action to be considered in relation to Convention No. 119 and Recommendation No. 118

As machines are used in all economic branches and accidents continue to be frequent, the instruments do not appear to have lost their purpose. However, there are some indications that Convention No. 119 and Recommendation No. 118 may not be fully consistent with the modern regulatory approach to OSH. The effective supervision of the obligations of manufacturers and other persons procuring machines remains challenging, especially in view of the magnitude of trade in a globalized economy, and related questions concern the import and export of machinery.

Taking into account the continuing need for regulation concerning the guarding of machinery, as well as the need to accommodate scientific developments and changes in the world of work, the SRM TWG may wish to consider whether Convention No. 119 and Recommendation No. 118 are in need of revision. If it concludes, following its examination, that Convention No. 119 and Recommendation No. 118 are in need of revision, the SRM TWG may wish to consider:

1. Determining that, as Convention No. 119 and Recommendation No. 118 require revision, they should be classified as *instruments requiring further action* within their current legal status as active instruments, accordingly necessitating practical and time-bound follow-up action.
2. Proposing practical and time-bound follow-up action through a revision process on OSH that particularly takes into account the discussions of the SRM TWG in this regard.

²³ [ILO: Safety in the working environment: General Survey on the Guarding of Machinery Convention, 1963 \(No. 119\), and the Guarding of Machinery Recommendation, 1963 \(No. 118\), and on the Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977 \(No. 148\), and the Working Environment \(Air Pollution, Noise and Vibration\) Recommendation, 1977 \(No. 156\), Report III \(Part 4B\), International Labour Conference, 73rd Session, Geneva, 1987.](#)

3. Deciding that it will monitor the Organization's implementation of the proposed follow-up and, at an appropriate time, reconsider changing the legal status of the instruments to reflect developments.
4. Making any resulting recommendations to the Governing Body.